Lower Passaic River Study Area

Lehn & Fink Products Co.

EPA Correction and Supplement to PRP Data Extraction Form

April 20, 2010

STWB, Inc. is the corporate successor to Lehn & Fink Products Co.

The PRP Data Extraction Form for the Lehn & Fink Products Co. facility located at 192-194 Bloomfield Avenue, Bloomfield, New Jersey erroneously identifies Reckitt Benckiser plc as the successor to the liability for the ownership and operation of this facility, as opposed to STWB, Inc.

The Data Extraction Form states that Lehn & Fink Products Co. was acquired by Reckitt & Colman plc in 1994. However, as set forth in the March 12, 2010 letter from Keith Lynott, counsel to Reckitt Benckiser, Inc., Lehn & Fink Products Corp. was merged into Sterling Drug, Inc. in 1966. (*See* March 12, 2010 letter from Keith Lynott to Sarah Flanagan, attached.) Sterling Drug, Inc. ("Sterling") later changed its name to Sterling Winthrop Inc. (*See Eastman Kodak Company v. STWB, Inc.*, 452 F.3d 215 (2d Cir. 2006) attached.)

As a result of the 1966 merger, Lehn & Fink Products Co. ceased to exist. (*See* March 12, 2010 letter from Keith Lynott; *Sterling Drug, Inc. v. FTC,* 450 F.2d 698 (D.C. Cir., 1971) (discussing merger), attached.) Sterling did continue to use the name as a "doing business as" name, and for an operating unit, the "Lehn & Fink Products Division." (*See* excerpt from Eastman Kodak Co. Annual Report to Stockholders, 12/31/1989, pp. 5, 24, attached.)

In 1988, Sterling was purchased by Eastman Kodak Co. ("Kodak"). In 1994, Sterling conveyed the assets of its L&F Products Division to Kodak and L&F Products, Inc., a subsidiary of Kodak, and those two entities conveyed the former L&F Products Division assets and specified liabilities to Reckitt Colman plc. (*See* Asset Purchase Agreement among Eastman Kodak Company, L&F Products Inc., Sterling Winthrop Inc. and Reckitt & Colman PLC, dated September 26, 1994, attached). Environmental liabilities associated with discharges from the former operations of Lehn & Fink were not transferred to Reckitt Colman. At approximately the same time as this transaction, Kodak sold the stock of Sterling Winthrop Inc. to SmithKline Beecham plc, which then sold the stock to Bayer AG. (*See* March 12, 2010 letter from Keith Lynott; *Eastman Kodak Company*, 452 F.3d at 217.) Sterling changed its name to STWB Inc.

STWB Inc., the corporate successor by merger to Lehn & Fink Products Corp., continues to exist as a corporate entity, as a subsidiary of Bayer Corporation.

McCARTER &ENGLISH
ATTORNEYS AT LAW

March 12, 2010

VIA HAND DELIVERY

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Re: Diamond Alkali Superfund Site

Dear Ms. Flanagan:

I write on behalf of Reckitt Benckiser, Inc. ("Reckitt") in response to the letter dated December 11, 2009 from Ray Basso of the United States Environmental Protection Agency ("USEPA") to Bart Becht of Reckitt regarding this site. You agreed to extend Reckitt's time for response to this letter through March 12, 2010. We most appreciate that accommodation.

In the December 11, 2009 letter, the USEPA requests that Reckitt become a "cooperating party" for the Lower Passaic River Restoration Project. The letter states that the USEPA believes that Reckitt, as the purported successor to "Lehn & Fink Products Co.", may have potential liability for releases from a site located at 192-194 Bloomfield Avenue, Bloomfield, New Jersey (the "Property") to the Lower Passaic River Study Area ("LPRSA"). For the reasons set forth briefly below, we believe Reckitt is not a successor to "Lehn & Fink Products Co." and does not bear potential liability for releases (if any) from the Property to LPRSA. Accordingly, although Reckitt is, of course, willing to consider any additional facts the agency may wish to provide in support of its request, Reckitt respectfully declines to become a member of the "cooperating parties" group at this time. Instead, Reckitt believes that the USEPA should withdraw the December 11 request letter directed to Reckitt.

As an initial matter, I note that Reckitt never owned or operated the Property at any time for any purpose. Reckitt thus does not bear any direct liability under CERCLA for releases of hazardous substances (if any) at or from the Property. Reckitt does not have any information concerning environmental conditions at the Property. As the December 11 letter appears to acknowledge, the only conceivable basis for potential liability under CERCLA in relation to the Property and the LPRSA could be via the law of "successor liability." However, pursuant to the applicable case law dealing with successor liability under CERCLA, Reckitt is not a successor to "Lehn & Fink Products Co.", or to any other entity of a similar name.

SALIENT TRANSACTION FACTS

In 1994, pursuant to the terms and conditions of an Asset Purchase Agreement among Eastman Kodak Company, L&F Products Inc., Sterling Winthrop Inc. and Reckitt & Colman PLC (the "Agreement"), Reckitt's parent company purchased the assets and specified liabilities of the household products, professional products and personal products business of the L&F Products Division of Sterling Winthrop Inc. (which assets and specified liabilities are defined in the Agreement as the "Business"). In connection with this transaction, Sterling Winthrop Inc. conveyed the assets of its L&F Products Division to L&F Products Inc. and one or more affiliates of Eastman Kodak Company ("Kodak").[1] Kodak, together with L&F Products Inc., (L&F Products Inc. denominated in the Agreement as the "Seller"), conveyed or caused to be conveyed the assets and specified liabilities of the Business to Reckitt & Colman PLC. At approximately the same time as this transaction was completed, Kodak also sold the stock of Sterling Winthrop Inc. to SmithKline Beecham plc.[2]

The following features of the transaction described above are pertinent to (and, we believe, determinative of) any assessment of whether Reckitt could be deemed a successor to "L&F Products Co." (or any other similarly named or related entity) as posited in your letter:

- The transaction was an arm's length asset purchase transaction for a total cash consideration in excess of $1.55 billion, completed among entities and/or affiliates of entities that were and remain large, diversified publicly traded concerns. The selling parties in the transaction did not receive stock in the purchaser as any part of the consideration for the sale of assets.

- The transaction did not involve a merger or consolidation of the seller entities with the purchaser or any direct or indirect continuation of ownership by such seller entities of the purchaser or the purchased assets or liabilities constituting the Business.

- Reckitt & Colman PLC purchased only the assets and specified liabilities of the "Business" as defined in the Agreement, which in turn constituted some of the assets of the L&F Products Division of Sterling Winthrop Inc.

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[1] Lehn & Fink Products Corp. was formed in 1925. In 1966, that entity was merged into Sterling Drug Inc., which later changed its name to Sterling Winthrop Inc. and is now named STWB Inc. As a result of the 1966 merger, Lehn & Fink Products Corp. ceased to exist. L&F Products Inc. was formed in 1994 as a subsidiary of Kodak apparently for the purpose of facilitating the divestiture of Sterling Winthrop Inc. to different purchasers. As noted above, it received the assets of the L&F Products Division of Sterling Winthrop Inc. and then conveyed such assets to the purchasers of those assets. It was dissolved in 1997.

[2] We understand the shares were subsequently conveyed to Bayer AG and that Sterling Winthrop Inc. (now named STWB Inc.) is today a subsidiary of Bayer AG.

- Indeed, review of the Agreement makes clear that the transaction did not involve all of the assets of the L&F Products Division, of Sterling Winthrop Inc., of L&F Products Inc., or of Kodak. Substantial other assets of the L&F Products Division, including without limitation, the assets associated with the "Do-It-Yourself" Business of the L&F Products Division (including the business of Minwax Company, Inc., Thompson & Formby Inc. and other entities) were explicitly excluded from the transaction and remained with the seller (and were later sold in a separate transaction). In addition, cash, investment securities, certain intellectual property and other assets of the L&F Products Division were excluded. Also expressly excluded from the transaction were Sterling Winthrop Inc.'s ethical and over-the-counter drug businesses. Following the completion of the transaction, Sterling Winthrop Inc. (now named STWB Inc.) and Kodak remained in existence and continue to remain in existence today.

- In purchasing the assets and specified liabilities of the Business, Reckitt & Colman PLC only acquired certain Owned and Leased Real Property as specifically set forth in the Agreement. The location set forth in the USEPA's December 11 letter – 192-194 Bloomfield Avenue, Bloomfield, New Jersey – was not among the properties or leasehold interests that were acquired. Reckitt understands that operations at this property ended in the mid-1960s, and the property may have been sold years before the 1994 transaction. Neither Reckitt & Colman PLC nor its affiliates conducted operations at the Property. Nor did Reckitt (to its knowledge) acquire operating assets from that former facility.[3]

- Reckitt & Colman PLC assumed only certain liabilities associated with the Business as specifically set forth in the Agreement. All other liabilities were expressly excluded and defined as "Excluded Liabilities." Such excluded liabilities expressly included all liabilities for environmental claims or remediation relating to owned or leased property, the ownership or leasehold interests in which were not conveyed in the transaction. It follows that Reckitt & Colman PLC did not acquire through this transaction any ownership or leasehold interest in the Property or assume liabilities (if any) associated with environmental conditions on, at or from such Property.

Given these circumstances, there is no basis for the USEPA to believe that Reckitt may bear potential liability under CERCLA in relation to the Property or the LPRSA as a successor to "Lehn & Fink Products Co." or any other similarly named entity (or

[3] Having never been an owner or operator of the Property at any time, Reckitt has no knowledge of the past or present environmental condition of the Property or of wastewater discharges from the Property. Reckitt does not acknowledge there have been releases of hazardous substances at or from the Property, including releases to the LPRSA, or that past operations at the Property had any impact upon the LPRSA.

affiliate of the same). A brief examination of the legal basis for this conclusion follows:

BRIEF LEGAL ANALYSIS

The United States Court of Appeals for the Third Circuit has determined that, in light of the need for uniform rules of law governing the interpretation of CERCLA and the imposition of liability under that statutory regime, the question of whether an asset purchaser can be liable under CERCLA as a successor to a CERCLA responsible party is a matter of federal common law and not a function of the law of any individual state. See *United States v. General Battery Corporation*, 423 F.3d 294 (3d Cir. 2005). The Court has further concluded that, in matters involving alleged "successor liability" under CERCLA, it will apply the common law rules of successor liability applied by a majority of courts, pursuant to which an asset purchaser is not deemed a successor to the seller/prior owner except in highly limited circumstances. The Court of Appeals has specifically rejected efforts by the United States in CERCLA cases to expand the limited exceptions to non-liability by adoption of theories of successor liability that some individual states have created for product liability and labor law matters.

A. Overview of Successor Liability Under CERCLA

When addressing contentions of successor liability, courts (appropriately) view mergers and consolidations differently from asset sales. When two corporations merge or consolidate, the liabilities of the seller become the liabilities of the surviving company by operation of law. *Smith Land & Improvement Corp., v. Celotex Corp.*, 851 F.2d 86, 91 (3d Cir. 1988). However, where no merger or consolidation occurs, but one corporation merely purchases the assets of another, the "successor will not be saddled with the seller's liability except under certain conditions." *Smith Land*, 851 F.2d at 91. In *Smith Land*, the Court of Appeals emphasized that, rather than allow the question of successor liability under CERCLA to be guided by the somewhat more expansive principles that may exist in a few states, the general doctrine of successor liability applicable in most states (the "majority" federal common law view) will guide the inquiry.

The Court of Appeals for the Third Circuit recently re-affirmed this principle in *General Battery*, *supra*, 423 F.3d at 294. There, the Court of Appeals considered whether liability under CERCLA could be imposed upon the purchaser of the assets of a defunct battery manufacturer. Price Battery had manufactured lead acid batteries for more than 30 years at a plant in Hamburg, Pennsylvania, and had disposed of wastes at several locations at which the United States incurred response costs. General Battery had acquired the assets of Price Battery in 1966 for cash and stock. Price Battery had been a small, privately-held business. Its sole shareholder sold all of the assets of the business to General Battery for $2.95 million and 100,000 shares of General Battery stock. As a result of the transaction,

the sole shareholder of Price Battery acquired a stake in General Battery that was comparable to the stakes then held by the latter firm's co-founders. General Battery also leased Price Battery's sole manufacturing facility from a non-profit development corporation to which the property had been conveyed prior to the transaction. Following the transaction, Price Battery ceased operations, and held $150,000 pending completion of an audit (pertinent to post-closing adjustments to the purchase price). Following the audit, Price Battery was dissolved.

The Court of Appeals determined the question of "successor liability" under CERCLA by applying, as a matter of federal common law, the "'general doctrine of successor liability in operation in most states'" 423 F.3d at 304 (quoting from *Smith Land & Improvement Corp.*, *supra*, 851 F.2d 86, 92). The Court held that application of the "majority" standard "fosters CERCLA predictability. It also accords respect to existing corporate relationships predicated on the majority state law. . ., while ensuring responsible parties, including successor corporations, contribute their fair share to the cleanup of hazardous waste under the federal program." 423 F.3d at 303 (citations omitted).

The Court also noted that "[a] more uniform and predictable federal liability standard corresponds with specific CERCLA objectives by encouraging settlements and facilitates a more liquid market in corporate and 'brownfield' assets". *Id.* at 302. In contrast, "[i]ncorporating various and uncertain successor liability standards would increase significantly CERCLA litigation and transaction costs – in conflict with statutory interests embodied in 42 U.S.C. § 9622, which aims to encourage early settlements, and § 9607(r), which aims to facilitate a liquid market in brownfield assets." *Id.* at 303. The Court further observed that, although there was a "veneer of uniformity" of state law standards governing successor liability, the uniformity was "less apparent" when the general standards are applied to particular cases and, indeed, the "'entire issue of successor liability . . . is dreadfully tangled.'" *Id.* at 301 (quoting *EEOC v. Vucitech*, 842 F.2d 936, 944 (7th Cir. 1988)).

Applying the "majority" principles to the facts at hand, the Court of Appeals concluded that *General Battery* was the successor to Price Battery. In so holding, however, the Court reiterated that "[t]he general rule of corporate successorship accepted in most states is *non-liability* for acquiring corporations," 423 F.3d at 305 (emphasis added), with the following exceptions:

> The purchaser may be liable where: (1) it assumes liability; (2) the transaction amounts to a consolidation or merger; (3) the transaction is fraudulent and intended to provide an escape from liability; or (4) the purchasing corporation is a mere continuation of the selling company.

423 F.3d at 305.

The Court then noted that the particular case before it involved the "*de facto* merger" exception and described the "majority" standard for determining whether an asset sale amounts to such a "*de facto* merger" as follows:

> This case involves the "*de facto* merger" exception which has four elements under the majority standard. It applies where:
>
> (1) There is a continuation of the enterprise of the seller corporation, so that there is a continuity of management, personnel, physical location, assets, and general business operations.
>
> (2) There is a continuity of shareholders which results from the purchasing corporation paying for the acquired assets with shares of its own stock, this stock ultimately coming to be held by the shareholders of the seller corporation so that they become a constituent part of the purchasing operations.
>
> (3) The seller corporation ceases its ordinary business operations, liquidates, and dissolves as soon as legally and practically possible.
>
> (4) The purchasing corporation assumes those obligations of the seller ordinarily necessary for the uninterrupted continuation of normal business operations of the seller corporation.

Id. The Court expressly noted that the "majority standard" for a *de facto* merger "generally tracks the inquiry under Pennsylvania law." *Id.*

The Court then concluded that each of the four elements for a *de facto* merger had been met in the case before it. In particular, it noted that there was "continuity of shareholders" because the sole shareholder of Price Battery had received, as consideration for the asset transaction, shares in General Battery in an amount so as to give him a stake in the latter entity that was equivalent to the stakes held by its two co-founders. This was sufficient to make the principal of the seller "'a constituent part of the purchasing corporation.'" 423 F.3d at 306 (quoting from 15 William Meade Fletcher, et al., *Fletcher Cyclopedia of the Law of Private Corporations* § 7124.20 at 302 (perm. ed., rev. vol. 1999)).

The Court also noted that Price Battery had, following the transaction, ceased operations, liquidated and dissolved "as soon as legally and practically possible", *id.* at 307, thus satisfying the third required element of the test. In this regard, the

Court noted that "[a]s recognized under the *de facto* merger doctrine, an essential characteristic of a merger is that one corporation survives while another *ceases to exist*." *Id.* (emphasis added).

Finally, the Court of Appeals explicitly rejected the argument of the United States, urging application of the "substantial continuity" doctrine which, according to the Court, eliminates certain required elements of the *de facto* merger analysis, including the continuity of ownership element, and "creates a more expansive rule of liability" than is accepted in most states. *Id.* at 309. The Court concluded that "substantial continuity" is "untenable as a basis for successor liability under CERCLA." *Id.*

B. None of the Four Exceptions to the General Rule of Non-Liability Applies

None of the recognized exceptions employed by the majority of courts applies here. As discussed above, the majority common law view of successor liability directs that a corporation acquiring the assets of another also takes on the liabilities of the seller *only* if one of four exceptions applies: (1) the successor expressly or impliedly agrees to assume the liabilities; (2) the transaction constitutes a *de facto* merger or consolidation; (3) the successor corporation is the mere continuation of the predecessor corporation, namely through the identity of shareholders as a result of the purchasing corporation using its own stock to pay for the acquired assets in whole or in part, so that the seller becomes a constituent part of the purchasing corporation; or (4) the asset purchase transaction is a fraudulent conveyance and an attempt to escape liability. *General Battery*, 423 F.3d at 305. In light of the nature and structure of the transaction described above, Reckitt cannot be deemed liable under CERCLA for potential obligations (if any) relating to the Property under the theory of successor liability as applied in the Third Circuit.

1. There was No Assumption of Liabilities

Under the Agreement, Reckitt did not expressly or impliedly assume the environmental liabilities (if any) arising from prior operations at the Property. Indeed, the opposite is true. Any such liabilities were *expressly excluded* from the transaction. As summarized above, Reckitt purchased only certain assets and specified liabilities of the "Business" as defined in the Agreement, which did not by any means constitute all of the assets of Sterling Winthrop Inc. or even of its L&F Products Division. All liabilities not expressly assumed were defined as "Excluded Liabilities" and expressly excluded. The "Excluded Liabilities" explicitly included all liabilities for environmental claims or remediation relating to either owned or leased property that was not conveyed through the transaction. In turn, the Owned and Leased Real Property conveyed through the transaction did not include the Property. Therefore, there was no assumption of liabilities that would trigger successor liability under CERCLA.

2. There was No *De Facto* Merger

As discussed above, the majority of courts held that four elements must be satisfied in order to determine that a *de facto* merger or consolidation has occurred: (1) continuity of management; (2) cessation of ordinary business and dissolution as soon as possible; (3) assumption by successor of liabilities ordinarily required for uninterrupted continuation of business of the predecessor; and (4) continuity of ownership/shareholders. *General Battery*, 423 F.3d 305. None of these factors supports a finding of a *de facto* merger here. To the contrary, the facts here amply demonstrate that there was no undertaking by Reckitt, Kodak, or Sterling Winthrop Inc. to effectuate a *de facto* merger or consolidation.

First, there was no continuation of the enterprise of Sterling Winthrop Inc. or Kodak, inasmuch as Reckitt only acquired one business segment of the seller enterprise. Reckitt did not even acquire all of the assets of the L&F Products Division of Sterling Winthrop Inc., much less did it acquire all of the assets of Kodak. Moreover, the Property itself was not among the limited assets purchased or leased by Reckitt.

Second, there was no contemporaneous dissolution of Sterling Winthrop or Kodak after the transaction, as there was, for example, in *General Battery*. The transaction was limited to a purchase by Reckitt of certain assets, not even including all the assets of the L&F Products Division and specifically not including the Property at issue here. Kodak and Sterling Winthrop Inc. remained in existence following the sale of the assets. The parties plainly did not engage in this transaction to cleanse the purchased assets of liabilities, and allow the seller entities to retain an ownership interest in such assets while avoiding whatever obligations (if any) they may have in relation to the Property.

Third, there was no assumption by Reckitt of the liabilities "ordinarily necessary for the uninterrupted continuation of the business of the predecessor." Reckitt only assumed certain expressly enumerated liabilities related to the Business and expressly excluded all other liabilities, including all other liabilities of the L&F Products Division and/or of Sterling Winthrop Inc.

Most importantly, there was no continuity of shareholders such that the shareholders of the seller ultimately became a "constituent part" of Reckitt, the purchasing corporation. *General Battery Corp., Inc.*, 423 F.3d at 307. Unlike *General Battery*, where the sole shareholder of the predecessor company received 100,000 shares of General Battery stock in exchange for selling his company, the parties involved in this transaction were completely unrelated, large publicly held entities that entered into a good faith transaction for substantial cash consideration ($1.55 billion). The selling entities did not receive any stock in Reckitt as part of the transaction and thus Reckitt was not a "reincarnation" of the seller entities.

The Third Circuit's decision in *Berg Chilling Systems, Inc. v. Hull Corporation*, 435 F.3d 455 (3d Cir. 2006), is instructive, inasmuch as the facts in that case were closely analogous to the facts here. Although *Hull* was decided under Pennsylvania law, the Third Circuit made clear in *General Battery* that Pennsylvania successor liability law, and in particular the elements of the *de facto* merger exception as applied under Pennsylvania law, are in accord with the majority view of successor liability, which majority view controls in a CERCLA case.

In *Hull*, the question was whether SP Industries Inc. ("SPI") was a successor to Hull Corporation and liable for the obligations of Hull under a commercial contract. Hull had sold the assets of its Food, Drug and Chemical Division ("FDC Division") to SPI for cash. The Court of Appeals held as a matter of law that SPI was not a successor of Hull and, in particular, that the asset sale transaction did not result in a *de facto* merger or mere continuation of Hull.

Noting the four required elements for a *de facto* merger, the Court of Appeals concluded that there was no "continuity of ownership", because the Asset Purchase Agreement fixed the consideration at $6 million in cash. In this regard, the Court noted that "[t]he objective of this requirement [continuity of ownership requirement] is usually to identify situations in which shareholders of a seller corporation unfairly attempt to impose their costs or misdeeds on third parties by retaining assets that have been artificially cleansed of liability." 435 F.3d at 469.[4]

The Court next concluded there was no "continuity of enterprise" even though SPI established a "Hull Company Division" and continued the operations of Hull's FDC Division, operated the same facilities, manufactured the same products, assumed contractual obligations of the division, used the name "Hull Company" and employed the same personnel. However, because the transaction involved only the purchase of one operating division of the Hull Corporation, there was no indication "on a corporate level" that SPI "continued Hull's enterprise." *Id.* at 470. Indeed, until just prior to the Court's decision, "Hull was extant and master of its own corporate destiny." *Id.*

The Court of Appeals also pointed out that the third element of the test was not satisfied. This was so because "the FDC Division of Hull Corporation ceased its freeze drying operations and agreed not to compete with SPI's Hull Company Division", but "Hull continued to exist as a corporate entity and continued to operate its other divisions." *Id.* at 470.

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[4] The Court of Appeals noted that continuity of ownership is "critical" to a successor liability claim under Pennsylvania law. *Id.* at 469. Because Pennsylvania's successor liability principles are in accord with the majority rules of law on this issue, continuity of ownership of the selling and purchasing enterprises is also "critical" to a determination of successor liability under CERCLA.

Finally, the Court concluded that SPI had not assumed the obligations of Hull "necessary for uninterrupted continuation of normal business operations", even though SPI assumed all the accounts receivable and contracts of the FDC Division. However, "[i]t is equally unambiguous that SPI did not assume any of Hull's obligations relating to any other divisions; the APA [Asset Purchase Agreement] itself defined the subject matter of the contract as only the FDC Division, and specifically excluded all other corporation assets and liabilities." *Id.*

Because SPI had only purchased the assets of a single division of Hull and in the absence of continuing ownership in the alleged successor or dissolution of the selling enterprise, the Court concluded the *de facto* merger exception to the general principle of non-liability was not applicable. "In sum, the APA resulted in a combination of like corporation *divisions*, but not of corporate *entities*. Thus the *de facto* merger exception to the rule of successor non-liability will not render SPI liable for Hull's breach of the [commercial contract in issue]". *Id.* (emphasis in original).[5] Likewise here, the transaction did not constitute a *de facto* merger.

3. Reckitt was Not a "Mere Continuation" of Sellers

As noted above, the Court of Appeals has determined that the mere continuation exception is analytically identical to the *de facto* merger exception. Under the traditional "mere continuation" theory, a purchasing corporation is a "mere continuation" if after the transfer of assets, there is an "identity of stock, stockholders, and directors between the two corporations." *Action Manufacturing Co., Inc. v. Simon Wrecking Co., et al.*, 387 F.Supp.2d 439, 447 (E.D.P.A. 2005). As addressed by the Third Circuit in the context of CERCLA cases, a continuity of ownership depends on whether "the owners of the predecessor enterprise become a 'constituent part' of the successor by retaining some ongoing interest in their assets." *General Battery*, 423 F.3d at 307.

There is no basis for a finding that the asset sale at issue here resulted in a "mere continuation" of seller enterprise or that the seller retained an ongoing interest in the assets sold to Reckitt. First, Reckitt paid $1.55 billion in cash for the specified Business and associated assets in an arm's-length sale. There was no continuing ownership by the seller entities in the purchasing entity and, as noted, the transaction involved only a portion of the assets of the seller enterprise. Moreover, the Property was not among the assets acquired by Reckitt. There is also no

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[5] The Court of Appeals also noted that the "mere continuation" exception is analytically indistinct from the *de facto* merger exception:

> The *de facto* merger exception is similar to the continuation exception, save that the latter focuses on whether the purchaser is merely a restructured or reorganized form of the Seller. Although the parties separate their analyses, we follow the trend of the courts here and treat the exceptions identically."

Id. at 468.

evidence that the transaction resulted in the dissolution of Sterling Winthrop Inc. or Kodak or rendered Sterling Winthrop Inc. or Kodak incapable of satisfying their liabilities. There is simply no basis for concluding that Reckitt was merely a restructured or reorganized form of the seller entities under substantially the same ownership as before.

4. The Transaction was Not Fraudulent

The transaction reflected in the Agreement was manifestly a legitimate arms-length acquisition. Even a cursory review of the Agreement shows that it was a negotiated transaction between unrelated parties. Each side had separate counsel. The Agreement sets forth substantial consideration for the sale of assets contemplated therein. There is certainly no evidence that the transaction was engineered by any party for a fraudulent purpose.

C. The Third Circuit Has Expressly Declined to Apply to CERCLA Matters Broader Exceptions to the General Rule of Non-Liability

Although courts in some states have created somewhat broader exceptions to the general principle of non-liability in certain areas, including products liability and labor law, the Third Circuit has made clear that such exceptions do *not* apply in the context of determining CERCLA successor liability. Compare *Ramirez v. Amsted Industries, Inc.*, 86 N.J. 347-348 (1981) (broadening the traditional corporate approach by adopting the "product line exception" developed by California courts for use in assessing successor liability in product liability cases) and *Rego v. ARC Water Treatment Co. of Pennsylvania*, 181 F.3d 396 (3d Cir. 1999) (the policy underlying successor liability in employment context is grounded in equitable principles of protecting an employee when the ownership of his employer suddenly changes) with *General Battery*, 423 F.3d at 303 (citing public policy objectives behind CERCLA that favor development of a brownfields market and the need for uniform application of CERCLA successor liability, the Third Circuit re-emphasized the need to apply the majority common law standard of four enunciated exceptions to the general principle of corporate non-liability in order to provide some "predictability" to successor liability under CERCLA).

Furthermore, the Third Circuit has made abundantly clear that the "substantial continuity test" previously adopted by some courts, including the Second Circuit, cannot apply to determine successor liability under CERCLA.[6] The "substantial continuity" theory holds that a corporation acquiring the assets of another may succeed to CERCLA liabilities if the acquiring corporation "substantially continues" the business operations of the other corporation. This test, which shifted the focus from ownership to continuity of operations, was later rejected by several courts,

[6] The "substantial continuity test" is sometimes referred to as the "continuity of enterprise test." *See Action Manufacturing*, 387 F.Supp.2d at 447.

including notably the Second Circuit (which had previously adopted it) as well as the Third Circuit, in light of *United States v. Bestfoods, et al*, 524 U.S. 51 (1998). See *General Battery*, 423 F.3d at 309 (noting that after *Bestfoods*, " 'substantial continuity' is untenable as a basis for successor liability under CERCLA"); *New York v. National Services Industries, Inc.*, 352 F.3d 682 (2d Cir. 2003) (rejects the substantial continuity test as departing from *Bestfoods'* directive to apply common law principles and not fashion CERCLA-specific rules); *Pfohl Bros. Landfill Site Steering Committee v. Browning-Ferris Industries of New York*, 2004 U.S. Dist.LEXIS 28367 (W.D.N.Y. 2004) (reiterating traditional common law standard for imposing CERCLA liability rather than the Second Circuit's prior attempt to adopt special "substantial continuity" rule, borrowed from labor law, for use in CERCLA).[7]

The Third Circuit's reasoning in *General Battery* applies with equal force to any other attempt to develop a more expansive basis for successor liability under CERCLA than is encompassed by the majority rules governing successor liability. Although recognizing that the states traditionally regulate tort and corporate law and that "true successor tort liability, including successor environmental liability, rests at the intersection of tort and corporate law," the Third Circuit reasoned that CERCLA's scheme is not served by borrowing an individual state's successor liability law. *General Battery*, 423 F.3d at 301. Just as the public policy objectives underlying products liability and labor law favored the expansion of the framework governing successor liability in those areas, the public policy objectives behind CERCLA have led the Third Circuit to expressly caution against expansion of the traditional common law principles governing successor liability. Such public policy includes the goal of encouraging the development of a brownfields market, which requires some "predictability" of the law governing successor liability under CERCLA. *See General Battery*, 423 F.3d at 303.

CONCLUSION

For the foregoing reasons, Reckitt does not believe it could conceivably bear potential liability for releases of hazardous substances (if any) associated with the Property. Instead, Reckitt believes the agency should withdraw the December request directed to Reckitt. Reckitt respectfully declines at this time to join the "cooperating parties" group. At the same time, however, Reckitt is willing to meet with the agency should you wish to discuss this matter further.

[7] Even if the "substantial continuity" approach were applied in CERCLA matters, it would have no application to the facts here, in which there was no continuity of operations of the seller enterprise (or prejudicial dissolution of the seller entities).

Reckitt submits this letter without prejudice to all of its rights and defenses should any actual claim or demand be asserted by the USEPA (or any other party) in the future in relation to the Property or the LPRSA. Reckitt reserves its right to supplement, amend, or modify this response at any time, including if and when different or additional information comes to its attention.

Very truly yours,

Keith E. Lynott

cc: William H. Hyatt, Esq. (via e-mail and U.S. mail)

452 F.3d 215, 38 Employee Benefits Cas. 1098, Pens. Plan Guide (CCH) P 23996W
(Cite as: 452 F.3d 215)

United States Court of Appeals,
Second Circuit.
EASTMAN KODAK COMPANY, Plaintiff,
Martin M. Coyne, Plaintiff-Appellant
v.
STWB, INC., formerly known as Sterling Winthrop Inc., Bayer Corp., formerly Miles Inc., The Supplemental Benefit Plan Committee of Sterling Drug Inc., and The Sterling Drug Inc. Supplemental Benefit Plan, Defendants-Appellees.
Docket No. 05-2937-cv.

Argued: Feb. 2, 2006.
Decided: June 26, 2006.

Background: Retiree, and his final employer, which had acquired and then sold corporation for which retiree originally had worked, sued corporation and its parent, seeking supplemental retirement benefits and indemnification for supplemental benefits paid, respectively. The United States District Court for the Southern District of New York, 369 F.Supp.2d 473,Cedarbaum, J., dismissed for failure to administratively exhaust under Employee Retirement Income Security Act (ERISA). Retiree appealed.

Holdings: The Court of Appeals, Calabresi, Circuit Judge, held that:
(1) dismissal without prejudice was appealable final decision, and
(2) retiree could not be required to exhaust administrative remedies that were adopted only after retiree brought suit.

Vacated and remanded.

West Headnotes

[1] Federal Courts 170B 776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
Court of Appeals reviews de novo federal district court's dismissal of ERISA claim for failure to exhaust administrative remedies. Employee Retirement Income Security Act, § 502(a), 29 U.S.C.A. § 1132(a); 29 C.F.R. § 2560.503-1.

[2] Federal Courts 170B 589

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(C) Decisions Reviewable
170BVIII(C)2 Finality of Determination
170Bk585 Particular Judgments, Decrees or Orders, Finality
170Bk589 k. Dismissal and Nonsuit in General. Most Cited Cases
Federal district court's dismissal without prejudice, on administrative exhaustion grounds, of retiree's ERISA claim against former employer seeking supplemental retirement benefits, constituted appealable final decision, regardless of district court's accompanying order to employer to accept retiree's complaint as claim for benefits; dismissal terminated litigation and court's responsibilities. 28 U.S.C.A. § 1291; Employee Retirement Income Security Act, § 502(a)(1)(B), 29 U.S.C.A. § 1132(a)(1)(B); 29 C.F.R. § 2560.503-1.

[3] Federal Courts 170B 617

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review
170BVIII(D)1 Issues and Questions in Lower Court

170Bk617 k. Sufficiency of Presentation of Questions. Most Cited Cases
Retiree appealing from federal district court's dismissal, on administrative exhaustion grounds, of his ERISA action against former employer seeking supplemental retirement benefits, did not raise entirely new argument concerning necessity for exhaustion simply by citing ERISA "deemed to have exhausted" regulation he had not cited below; thus, Court of Appeals could consider regulation. Employee Retirement Income Security Act, § 502(a)(1)(B), 29 U.S.C.A. § 1132(a)(1)(B); 29 C.F.R. § 2560.503-1(*l*).

[4] **Federal Courts 170B 611**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review
170BVIII(D)1 Issues and Questions in Lower Court
170Bk611 k. Necessity of Presentation in General. Most Cited Cases
Court of Appeals ordinarily will not hear arguments not made to district court; however, appellate court may entertain additional support that party provides for proposition presented below.

[5] **Labor and Employment 231H 682**

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)5 Actions to Recover Benefits
231Hk681 Exhaustion of Remedies
231Hk682 k. In General. Most Cited Cases
Under ERISA's "deemed to have exhausted" regulation, retiree who asserted claim under former employer's supplemental retirement benefits plan could not be required to exhaust administrative remedies prior to bringing ERISA civil enforcement action, where employer had adopted those remedies only after action was filed and had made them retroactive to date preceding retirement. Employee Retirement Income Security Act, § 502(a)(1)(B), 29 U.S.C.A. § 1132(a)(1)(B); 29 C.F.R. § 2560.503-1(*l*).

***216** Karen M. Wahle (Khuong G. Phan, on the brief), O'Melveny & Myers LLP, Washington, D.C., for Plaintiff-Appellant.

John J. Myers, Eckert Seamans Cherin & Mellott, LLC, Pittsburgh, Pa., for Defendants-Appellees.

W. Iris Barber, Senior Trial Attorney (Howard M. Radzely, Solicitor of Labor, Timothy D. Hauser, Associate Solicitor, Nathaniel I. Spiller, Associate Deputy Solicitor for Supreme Court Litigation and Appellate Advice, and Karen L. Handorf, Counsel for Appellate and Special Litigation, on the brief), for Amicus Curiae Elaine L. Chao, Secretary of the United States Department of Labor, in support of Plaintiff-Appellant.

Jay E. Sushelsky, AARP Foundation Litigation (Melvin R. Radowitz, AARP, on the brief), for Amicus Curiae AARP, in support of Plaintiff-Appellant.

Before CALABRESI and STRAUB, Circuit Judges, and DRONEY, District Judge.[FN*]

FN* The Honorable Christopher F. Droney, United States District Court for the District of Connecticut, sitting by designation.

CALABRESI, Circuit Judge.

In this appeal, we are asked to decide whether an employee benefit plan participant is required, under the Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1101 *et seq.*, to exhaust an administrative claims procedure that was adopted by his plan only after he had already brought an ERISA action to recover benefits. The district court held that the exhaustion of such remedies was a prerequisite to seeking relief in court, and so dismissed the plaintiff's suit without prejudice. We hold that the exhaustion of such remedies is excused under 29 C.F.R. § 2560.503-1(*l*).

Accordingly, we vacate the decision of the district court, and remand***217** to the district court for a benefits determination.

BACKGROUND

While an employee of Sterling Winthrop ("Sterling"), Plaintiff-Appellant Martin Coyne began participating in employer-sponsored benefit plans.[FN2] These included Sterling's standard retirement plan as well as its Supplemental Benefit Plan ("Supplemental Plan" or "Plan"), a so-called "top hat" plan. [FN3] Top hat plans are designed to provide certain employees with payments over and above the benefits provided by "qualified" employee benefit plans-*i.e.,* plans that are eligible for favorable tax treatment, such as Sterling's standard retirement plan. The Internal Revenue Code limits the value of benefits that may be paid under qualified plans, *see* 26 U.S.C. §§ 401(a)(17), 415-hence the need for top hat plans when employers wish to provide a higher level of deferred compensation to some of their employees. Top hat plans are exempt from many provisions of ERISA, including the participation and vesting, funding, and fiduciary responsibility requirements, *see* 29 U.S.C. §§ 1051(2), 1081(a)(3), 1101(a)(1), but like qualified plans, they are subject to disclosure requirements, to civil enforcement, and to the duty to have a claims procedure, *see* 29 U.S.C. §§ 1021, 1132, 1133.

FN2. Sterling subsequently changed its name to STWB Inc. For the sake of simplicity, where possible we refer to the company as "Sterling" without regard to the name change.

FN3. The parties' submissions reflect a disagreement as to when Coyne began participating in the Supplemental Plan. Coyne alleged to the district court that he became a participant in 1982, and Defendant-Appellee Bayer Corporation ("Bayer") counters that the Plan did not take effect until January 1, 1991, by which point Sterling's standard retirement plan had been combined with Eastman Kodak Company's. *See infra.* This disagreement is not material to the issue on appeal, and we therefore do not attempt to resolve it.

In Coyne's case, Sterling's Supplemental Plan promises to make up the shortfall between (a) what the qualified plan *actually* pays, and (b) the level of regular pension benefits participants *would* receive, but-for the limits placed on qualified plan payouts by the tax code. The Supplemental Plan confers "full power and authority" on the Plan committee to make "binding and conclusive" decisions on benefit claims and all other issues arising under the Plan. Based on estimates from an actuarial consulting firm, Coyne places the pre-tax value of his benefits under the Plan at roughly $11,300 per month.

Coyne started working for Sterling in 1981. He and the company eventually parted ways amid a string of corporate recombinations. As a result, responsibility for Coyne's benefits under the Supplemental Plan seemed, for a time, to have gotten lost in the shuffle. Sterling was bought by Eastman Kodak Company ("Kodak") in 1989, at which point Sterling's retirement programs became part of Kodak's retirement plan. Sterling changed hands again in 1994, becoming a wholly-owned subsidiary of Defendant-Appellee Bayer Corporation ("Bayer") through a two-stage, three-firm transaction that also involved SmithKline Beecham. *See Eastman Kodak Co. v. STWB Inc.,* 232 F.Supp.2d 74, 77-83 (S.D.N.Y.2002). The parties agree, however, that none of the transactions described above terminated Sterling's liability for any payments due to Coyne under the terms of the Supplemental Plan. Coyne continued to work for Sterling until shortly after the company's 1994 sale to Bayer, when Coyne became an employee of Kodak, for whom he worked until his retirement in July 2003.

***218** Starting in May 2003, as Coyne approached retirement, representatives of Kodak contacted Bayer by e-mail on Coyne's behalf to arrange for payment of Coyne's benefits under the Supplemental Plan. It seems that no employee prior to Coyne had asserted a claim under the Plan-indeed, Coyne may be the only person eligible for benefits under it. Coyne's request for benefits was thus far from routine, and Bayer was not adequately prepared to handle it. Bayer had no claims procedure in place, and none was described in the Plan. Over the course of a year, Kodak made a number of entreaties to

Bayer, by e-mail, express mail, and fax, and these were met variously with skepticism, befuddlement, and silence. Initially, Bayer representatives expressed some doubt that the company was liable for Coyne's benefits. After requesting a copy of the Plan and related documents, which Kodak duly sent, Bayer then voiced some confusion as to why the claim was being pursued before Coyne had reached the retirement age of 55. On October 8, 2003, Bayer reported that it would convene its benefits group to address Coyne's claim. Although Kodak followed up with e-mails, Bayer appears not to have responded. Finally, on January 30, 2004, Kodak's controller e-mailed to announce that Kodak would "proceed as necessary to enforce our rights under the stock purchase agreement" pursuant to which Bayer acquired Sterling and assumed its liabilities.

Coyne became eligible to receive benefits under the Supplemental Plan on March 1, 2004. Still having heard nothing from Bayer, Kodak paid Coyne's first month of benefits. Kodak's controller again contacted Bayer, now seeking indemnification for the payment under the terms of the sale of Sterling to Bayer. Bayer did not respond, and in June 2004 Kodak and Coyne together filed suit in the United States District Court for the Southern District of New York. In the amended complaint,[FN4] Coyne sought recovery of benefits owed under the Plan, pursuant to 29 U.S.C. § 1132(a)(1)(B). Kodak sought indemnification for the payments it had made to Coyne, and Kodak and Coyne together sought a declaratory judgment that Bayer is obligated to pay Coyne benefits under the Supplemental Plan for the rest of Coyne's life, and to Coyne's wife for the rest of her life if he pre-deceases her. STWB Inc., Bayer, Sterling's Supplemental Benefit Plan's Committee, and the Sterling Supplemental Benefit Plan were named as defendants.[FN5]

FN4. Kodak and Coyne amended the complaint to add the ERISA claim and additional defendants after Sterling and Bayer moved to dismiss the initial complaint, *inter alia,* on the grounds that the breach of contract claim that was the essence of the original complaint was preempted by ERISA.

FN5. Defendant STWB Inc. was voluntarily dismissed from the case below and is no longer before this court. For the sake of simplicity, we use the name of the corporate parent, Bayer, to refer to all remaining Defendants-Appellees collectively.

In its answer, filed October 15, 2004, Bayer alleged that Coyne had failed to exhaust administrative remedies. At a pre-trial conference held the following week, Bayer explained that those administrative remedies consisted of a new claims procedure added to the Plan by "Amendment No. 1" ("Amendment"), which Sterling's Board of Directors adopted on July 12, 2004. The Amendment was retroactive, and made the claims procedure effective as of January 1, 2004.

Kodak and Coyne moved for summary judgment. Coyne argued that the Amendment had an adverse impact on his vested rights under the Plan, and hence, was invalid under the terms of the Plan, which ***219** forbade amendments that "retroactively impair or otherwise adversely affect" vested rights. The district court agreed with Coyne that his rights under the Plan were vested, but found that these rights were not impaired or adversely affected by the "purely procedural" introduction of a claim procedure. *Eastman Kodak Co. v. Bayer Corp.*, 369 F.Supp.2d 473, 479 (S.D.N.Y.2005). Accordingly, the district court concluded that the Amendment was valid, and that Coyne had failed to exhaust the available administrative remedies. The action was dismissed without prejudice to its refiling after Coyne exhausted the claims procedure. The district court also directed Bayer to accept Coyne's complaint as a claim for benefits that triggered the Plan's administrative procedures. *Id.* at 483.

Kodak and Coyne filed a notice of appeal, but Kodak subsequently withdrew from the appeal. In response to an inquiry from Coyne, the district court clarified that the administrative claims proceeding was not stayed pending appeal.[FN6]

FN6. At oral argument, counsel for Coyne indicated that the administrative claims proceeding had not resulted in a benefit determination in Coyne's favor. Hence, there is

no suggestion that the instant appeal may be moot.

DISCUSSION

[1] ERISA requires both that employee benefit plans have reasonable claims procedures in place, and that plan participants avail themselves of these procedures before turning to litigation. *See* 29 C.F.R. § 2560.503-1 (detailing requirements of claims procedures, including notification of adverse decisions within 90 days and the availability of a full and fair review of the initial determination); *see also Jones v. UNUM Life Ins. Co. of Am.*, 223 F.3d 130, 140 (2d Cir.2000) (noting that "there is a 'firmly established federal policy favoring exhaustion of administrative remedies in ERISA cases' ") (quoting *Kennedy v. Empire Blue Cross & Blue Shield*, 989 F.2d 588, 594 (2d Cir.1993)). Unless a "clear and positive showing" is made that it would be futile for the claimant to pursue her claim through the internal claims process, "that remedy must be exhausted prior to the institution of litigation." *Jones*, 223 F.3d at 140 (internal quotation marks omitted). We review *de novo* a district court's dismissal of ERISA claims for failure to exhaust administrative remedies. *Nichols v. Prudential Ins. Co. of Am.*, 406 F.3d 98, 105 (2d Cir.2005).

A. *Appellate Jurisdiction*

[2] As a threshold matter, Appellees contend that this court lacks jurisdiction to hear Coyne's appeal, because, they submit, the district court's order was not a final decision within the meaning of 28 U.S.C. § 1291. Appellees are correct, of course, that "[f]ederal appellate jurisdiction generally depends on the existence of a decision by the District Court that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978) (internal quotation marks omitted). But we find that this condition is satisfied here, and, therefore, that we have jurisdiction to hear Coyne's appeal.

The district court "dismissed [Coyne's suit] without prejudice to its refiling after Coyne has exhausted the administrative procedure under the amended Plan." *Eastman Kodak*, 369 F.Supp.2d at 483. It is well established in this circuit that a dismissal without prejudice, absent some retention of jurisdiction, is a final decision within the meaning of 28 U.S.C. § 1291, and hence, appealable. *See Wynder v. McMahon*, 360 F.3d 73, 76 (2d Cir.2004) ***220** (citing *Allied Air Freight, Inc. v. Pan Am. World Airways, Inc.*, 393 F.2d 441, 444 (2d Cir.1968)). Indeed, recently *Nichols v. Prudential Insurance Co. of America*, 406 F.3d 98 (2d Cir.2005), we reaffirmed this principle specifically in the context of ERISA claims. In that case-as in this one-the district court found that the plaintiff had failed to exhaust administrative remedies, and dismissed the suit without prejudice to its refiling after exhaustion. *See Nichols v. Prudential Ins. Co. of Am.*, 306 F.Supp.2d 418, 424 (S.D.N.Y.2004). The district court further directed the defendant to render a decision on Nichols's benefits claim within thirty days of her submission of additional records. *Id.* The defendant argued that we lacked jurisdiction to hear the appeal, but we concluded that the district court's disposition was a final decision within the meaning of 28 U.S.C. § 1291 from which appeal lay as of right. *Nichols*, 406 F.3d at 103-04.

Appellees argue that *Nichols* is not controlling. In that case, Appellees observe, the district court's order "le[ft] the primary responsibility for further action in the hands of Nichols," who had to take steps to exhaust her administrative remedies before returning to court. *Id.* at 104. Here, by contrast, the district court jump-started the administrative process without requiring any further action on Coyne's part, by directing the Plan's administrator to accept Coyne's complaint as a claim for benefits. *See Nichols*, 306 F.Supp.2d at 424. But this is a distinction without a difference, at least insofar as this court's jurisdiction to hear the appeal is concerned. In each instance, the court's order "terminates litigation and the court's responsibilities, while leaving the door open for some new, future litigation." *Nichols*, 406 F.3d at 104. And as such, it is subject to appellate review. *Cf. Zervos v. Verizon N.Y., Inc.*, 277 F.3d 635, 646 & n. 8 (2d Cir.2002) (leaving open the question whether an order *remanding* to an ERISA plan administrator is an appealable final decision).

B. *Exhaustion of Administrative Remedies*

Having established our jurisdiction, we turn to the principal question in this case: Whether a benefits claimant may be required to exhaust administrative remedies that were adopted only after the claimant has brought an action to recover benefits.

Bayer insists that the retroactive Amendment that added the claims procedure is valid under the terms of the Plan, and hence, may be applied to Coyne. Coyne gives a number of reasons why he was not required to exhaust the claims procedure. First, he argues that administrative remedies are "deemed exhausted" pursuant to a Department of Labor regulation. 29 C.F.R. § 2560.503-1(*l*) provides that where a plan fails to establish or follow ERISA-compliant claims procedures, "a claimant shall be deemed to have exhausted the administrative remedies available under the plan"; accordingly, the claimant is, without more, allowed to bring a suit to recover benefits. Second, Coyne argues that the Amendment adversely affects his rights-and is therefore invalid under the Plan's terms. This is so, Coyne contends, because the change permits the Plan's administrator, rather than a court, to make a benefit determination in the first instance, and such a determination is subject only to deferential "arbitrary and capricious" review in the courts. On a related note, after oral argument Coyne submitted a letter, pursuant to Federal Rule of Appellate Procedure 28(j), drawing our attention to a recent decision of this court, *Gibbs v. CIGNA Corp.*, 440 F.3d 571 (2d Cir.2006), in which we held that vested rights are violated when an ***221** employee welfare benefit plan is altered to commit benefit determinations to the plan administrator's discretion, where previously determinations were subject to *de novo* review. In the case before us, the Supplemental Plan, by its terms, already gave the administrator discretionary authority to determine benefits. But *Gibbs* is arguably relevant because, prior to the adoption of a claims procedure, decisions would as a practical matter be made *de novo* by the district court, since no benefit determination that could receive deference existed.

[3][4] We are persuaded that 29 U.S.C. § 2560.503-1(*l*) controls the outcome here, and so we do not reach Coyne's other arguments. First, however, we note that Bayer objects to Coyne's present reliance on the regulation, as Coyne failed to raise it before the district court. It is true that this court ordinarily will not hear arguments not made to the district court. *See, e.g., Pulvers v. First UNUM Life Ins. Co.*, 210 F.3d 89, 95 (2d Cir.2000). But appeals courts may entertain additional support that a party provides for a proposition presented below. *See Yee v. City of Escondido*, 503 U.S. 519, 534, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992) ("Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below."). Here, we regard Coyne's invocation of the regulation not as an entirely new argument, but as additional support for a claim that Coyne has made from the beginning: that Plan participants must exhaust only those administrative remedies in place at the time suit is filed. Accordingly, we consider it appropriate to take cognizance of the regulation in deciding this appeal.

[5] The "deemed exhausted" provision reads in full:

> In the case of the failure of a plan to establish or follow claims procedures consistent with the requirements of this section, a claimant shall be deemed to have exhausted the administrative remedies available under the plan and shall be entitled to pursue any available remedies under section 502(a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim.

29 C.F.R. § 2560.503-1(*l*).[FN7] Bayer admittedly had no ERISA-compliant claims procedure in place when Coyne first sought benefits. Still, Bayer notes, an ERISA-compliant claims procedure was adopted later, and it was given retroactive effect to before the time when Coyne filed his suit. Hence, Bayer suggests, the regulation does not apply, and Coyne must exhaust available remedies.

FN7. The "requirements of this section" include, *inter alia,* timely benefit determinations, written or electronic explanation of adverse

determinations, and the opportunity for appeal. *See* 29 C.F.R. §§ 2560.503-1(f), (g), (h).

Bayer's argument is not expressly foreclosed by the language of the regulation. The regulation provides that administrative remedies are deemed exhausted "[i]n the case of the failure of a plan to establish or follow [ERISA-compliant] claims procedures"; it does not indicate what the relevant timeframe is, nor what happens when a plan changes procedures. In theory at least, the later adoption of remedies with retroactive effect could undo the earlier exhaustion. But as a practical matter, this interpretation of the regulation is a non-starter, for reasons given by Coyne as well as by amici curiae the Secretary of Labor and the AARP. On such a reading, the regulation would be worse than ineffectual: it would create perverse incentives for plans not to meet their obligations under ***222** ERISA. Plans without ERISA-compliant claims procedures in place would have the power to force claimants, first, to resort to litigation to obtain their benefits, and then, to abandon their suit at whatever point (prior to final judgment) the plan adopted a claims procedure. On Bayer's interpretation, far from encouraging plans to meet their obligations under ERISA, the regulation would give plans every incentive to delay adopting claims procedures as long as possible.

It is hard to imagine that this is the result that the Secretary of Labor had in mind in promulgating 29 C.F.R. § 2560.503-1(*l*). We need not tax our imaginations, though, because the Secretary of Labor has made her views clear, in her amicus brief and through her appearance (by counsel) at oral argument. The Secretary confirms that "nothing in the claims regulation permitted Bayer to effectively 'undeem' exhaustion by enacting, for the first time, procedures that complied with the claims regulation after Coyne filed suit and after failing to offer an appropriate procedure in the many months preceding Coyne's lawsuit." Sec. of Labor Amicus Br. at 10-11; *see also id.* at 14 ("The regulation's 'deemed exhausted' directive would be totally frustrated if plans could simply amend the plan to resolve such procedural irregularities after the participant pursued his rights in court. Giving retroactive effect to a plan amendment in these circumstances thus plainly conflicts with the 'deemed exhausted' regulation."). Coyne's reading of the regulation, then, is also the Secretary of Labor's, and it is an interpretation that we find persuasive.[FN8]

FN8. In her amicus brief, the Secretary argues that her interpretation of the regulation is entitled to the full measure of deference contemplated in *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). Indeed, in *Auer v. Robbins*, 519 U.S. 452, 117 S.Ct. 905, 137 L.Ed.2d 79 (1997), the Supreme Court did grant full *Chevron* deference to an agency interpretation of its regulation that was advanced in an appellate brief. But, as the Seventh Circuit has noted, *Auer* was seemingly undercut by *Christensen v. Harris County*, 529 U.S. 576, 120 S.Ct. 1655, 146 L.Ed.2d 621 (2000), which held that many forms of agency interpretations that lack the force of law do not merit *Chevron* deference. *See Keys v. Barnhart*, 347 F.3d 990, 993-94 (7th Cir.2003). We need not decide precisely what quantum of deference is owed to resolve this case, however. For the agency interpretation of the "deemed exhausted" provision should be accepted, in any event, because it is persuasive. *See Skidmore v. Swift & Co.*, 323 U.S. 134, 65 S.Ct. 161, 89 L.Ed. 124 (1944). Indeed, as we explained above, we believe that the alternative explanation would produce senseless results.

A look at the context in which the "deemed exhausted" provision was adopted fortifies our conviction that the regulation may not be circumvented by a plan's belated creation of an ERISA-compliant claims procedure. The regulation took effect in 2002, and superceded a similar but narrower provision that "deemed" any claims not acted on before the regulatory deadline "denied" (thereby clearing the way for judicial proceedings). *See Linder v. BYK-Chemie USA, Inc.*, 313 F.Supp.2d 88, 93-94 (D.Conn.2004); 29 C.F.R. § 2560.503-1(h) (2000). The "deemed exhausted" provision was plainly designed to give claimants faced with inadequate claims procedures a fast track into court-an end not compatible with allowing a "do-over" to plans that failed to get it right the first time. Indeed, in describing the rationale behind the "deemed exhausted" provision, the Notice of Proposed

Rulemaking stated that "claimants denied access to the statutory administrative review process ... should be entitled to a full and fair review of their claims in the forum in which they are *first* provided adequate procedural ***223** safeguards." ERISA; Rules and Regulations for Administration and Enforcement; Claims Procedure, 63 Fed.Reg. 48390, 48397 (proposed Sept. 9, 1998) (codified at 29 C.F.R. pt. 2560) (emphasis added). And where (as here) the Plan lacked a claims procedure at the time the claimant brought suit, that forum is the district court.

We note also that this interpretation of the "deemed exhausted" provision is consistent with our rather uncompromising approach to the earlier "deemed denied" regulation. Thus, in *Nichols,* we held that the plaintiff's administrative claim to benefits must be "deemed denied" because no timely determination was made; the fact that the plan was in "substantial compliance" with ERISA's deadlines was irrelevant. *Nichols,* 406 F.3d at 107. The court rejected the idea that "substantial compliance can block or delay a plaintiff's access to the federal courts." *Id.* In the instant case, there was no compliance, substantial or otherwise, with ERISA's claim requirements until after Coyne's suit accrued. Like the *Nichols* court, we reject the idea that the small measure of conformity to the regulatory requirements shown in this case can block or delay a plaintiffs' right to sue.[FN9]

FN9. Bayer's other arguments as to why the regulation does not control the outcome here are also not persuasive. Thus, Bayer contends that 29 C.F.R. § 2560.503-1(*l*) does not apply to Coyne because he did not file a claim, and hence, was not a "claimant" within the meaning of that provision. But 29 C.F.R. § 2560.503-1(a) defines "claimant" to mean plan participants and beneficiaries-a group that undoubtedly includes Coyne. Nor, in light of our decision that the regulation controls, do we need to consider Coyne's alternative argument that it would be futile for him to avail himself of the Plan's administrative remedies.

CONCLUSION

For the reasons given above, we hold that, under the "deemed exhausted" provision of 29 C.F.R. § 2560.503-1(*l*), an ERISA benefits claimant is not required to exhaust a claims procedure that was adopted only after a suit to recover benefits has been brought. Accordingly, we VACATE the judgment of the district court, and REMAND for that court to decide, in the first instance, Coyne's claim to benefits under the Supplemental Plan.[FN10]

FN10. In resolving this appeal, we express no view as to whether 29 U.S.C. § 2560-503-1(*l*) applies in scenarios not presented here: for instance, where existing claims procedures comply substantially with the requirements of ERISA, or where an ERISA-compliant claims procedure is adopted after benefits are first sought, but prior to the filing of suit. *See* U.S. Dep't of Labor, Employee Benefits Security Administration, Frequently Asked Questions About the Claims Procedure Regulation, FAQ F-2, *http://www.dol.gov/ebsa/faqs/faq claims proc reg.html* (last visited June 26, 2006) (expressing the view that "not every deviation by a plan from the requirements of the regulation justifies proceeding directly to court").

C.A.2 (N.Y.),2006.
Eastman Kodak Co. v. STWB, Inc.
452 F.3d 215, 38 Employee Benefits Cas. 1098, Pens. Plan Guide (CCH) P 23996W

END OF DOCUMENT

450 F.2d 698, 146 U.S.App.D.C. 237, 1971 Trade Cases P 73,706
(Cite as: 450 F.2d 698, 146 U.S.App.D.C. 237)

United States Court of Appeals,
District of Columbia Circuit.
STERLING DRUG INC., Appellant,
v.
FEDERAL TRADE COMMISSION et al.
No. 24878.

Argued March 1, 1971.
Decided Sept. 22, 1971.
As Amended Sept. 27, 1971.

Proceeding on application for review of Federal Trade Commission order which denied request by litigant in proceeding before it for disclosure of certain documents pertaining to prior corporate acquisition case before the Commission. The United States District Court for the District of Columbia, William B. Bryant, J., upheld Commission order denying the request and the litigant appealed. The Court of Appeals, Tamm, Circuit Judge, held that action would be remanded to trial court to consider possibility of deleting portions of the documents and thus remove them from "inter-agency or intra-agency memoranda" exemption from Freedom of Information Act and for determination of whether there were appendices or statements of fact which were clearly subject to disclosure.

Remanded with directions.

Bazelon, Chief Judge, concurred in part and dissented in part and filed opinion.

West Headnotes

[1] Antitrust and Trade Regulation 29T 951

29T Antitrust and Trade Regulation
29TXVII Antitrust Actions, Proceedings, and Enforcement
29TXVII(A) In General
29Tk951 k. Administrative Proceedings and Investigations in General. Most Cited Cases
(Formerly 382k843 Trade Regulation)
Although Federal Trade Commission should have stated its reasons for denying diversified drug company's request for disclosure of documents in Commission's possession concerning Commission approval of another drug company's acquisition of a company, case would not be remanded to Commission for statement of the reason for its denial where the reasons for denial were fairly obvious and the drug company had suffered no hardship by virtue of the failure to state. 5 U.S.C.A. § 555(e).

[2] Records 326 50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases
(Formerly 326k14)
Purpose of Freedom of Information Act is to increase citizen's access to government records and to require federal agencies, upon proper request, to make available to any person identifiable records not specifically exempt. 5 U.S.C.A. § 552(a)(3).

[3] Records 326 67

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k67 k. Findings and Order; Injunctive Relief. Most Cited Cases
(Formerly 326k14)
Trial court's statement that documents in question were

"internal work papers in which opinions are expressed and policies formulated and recommended" was sufficient statement of reason for concluding that the Federal Trade Commission documents for which discovery was sought were within Freedom of Information Act exemption for "inter-agency or intra-agency memorandum or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C.A. § 552(b) (5).

[4] Records 326 ⚿63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
(Formerly 170Bk937.1, 170Bk937, 106k406.9(9))
Action by diversified drug company against Federal Trade Commission to enjoin the Commission from withholding as confidential certain records of the Commission with respect to another case which drug company contended was similar to its own would be remanded to trial court to consider possibility of deleting portions of the documents and thus remove them from "inter-agency or intra-agency memoranda" exemption from Freedom of Information Act and for determination of whether there were appendices or statement of fact which were clearly subject to disclosure. 5 U.S.C.A. § 552(b) (5).

[5] Records 326 ⚿57

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k57 k. Internal Memoranda or Letters; Executive Privilege. Most Cited Cases
(Formerly 326k14)
Disclosure under the Freedom of Information Act does not depend on needs of particular litigants as the correct test for determining which documents are not exempt as "intra-agency or inter-agency memoranda"; the test is whether "a private party-not necessarily the applicant" would routinely be entitled to the memoranda through discovery process in litigation with the agency. 5 U.S.C.A. § 552(b) (5).

[6] Records 326 ⚿57

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k57 k. Internal Memoranda or Letters; Executive Privilege. Most Cited Cases
(Formerly 326k14)
Memoranda of Federal Trade Commission with respect to approval of corporate acquisition and merger were within Freedom of Information Act exemption from discovery for inter-agency or intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. 5 U.S.C.A. § 552(b) (5).

[7] Records 326 ⚿57

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k57 k. Internal Memoranda or Letters; Executive Privilege. Most Cited Cases
(Formerly 326k14)
Primary purpose for exemption from Freedom of Information Act of administrative agency memoranda is to insure that federal agencies enjoy free flow of ideas essential to making of reasoned decision. 5 U.S.C.A. § 552(b) (5).

[8] Records 326 ⚿57

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k57 k. Internal Memoranda or Letters; Executive Privilege. Most Cited Cases
(Formerly 326k14)
Memoranda prepared by staff of Federal Trade Commission with respect to Commission's decision-making function in one case were not subject to disclosure to litigants in another case pending before the Commission. 5 U.S.C.A. § 552(b) (5).

[9] Records 326 ⚿57

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k57 k. Internal Memoranda or Letters; Executive Privilege. Most Cited Cases
(Formerly 326k14)
Any memoranda prepared by Federal Trade Commission staff or by an individual commissioner which specifically indicated that reasons for its decisions in prior corporate acquisition case were spelled out in one or more of other inter-agency memoranda would be subject to disclosure to litigants in pending corporate acquisition case in order to prevent development of secret law within the Commission. 5 U.S.C.A. § 552(b) (5).

[10] Records 326 ⚿57

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k57 k. Internal Memoranda or Letters; Executive Privilege. Most Cited Cases
(Formerly 326k14)
Memoranda prepared by individual commissioners of the Federal Trade Commission prior to issuance of Commission order in prior corporate acquisition case were not subject to disclosure to litigants in corporate acquisition case pending before the Commission. 5 U.S.C.A. § 552(b) (5).

[11] Records 326 ⚿57

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k57 k. Internal Memoranda or Letters; Executive Privilege. Most Cited Cases
(Formerly 326k14)
Memoranda issued by the Federal Trade Commission as documents emanating from the Commission as a whole, which set forth the interpretations and law which it actually applied in prior corporate acquisition case were subject to disclosure to litigants in corporate acquisition case pending before the Commission. 5 U.S.C.A. § 552(b) (5).

[12] Records 326 ⚿59

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k59 k. Trade Secrets and Commercial or Financial Information. Most Cited Cases
(Formerly 326k14)
Business and financial information submitted by corporations to Federal Trade Commission during course of corporate acquisition approval matter before the Commission were within Freedom of Information Act

exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential and were not subject to disclosure to litigants in another corporate acquisition matter pending before Commission. 5 U.S.C.A. § 552(b)(4).

[13] Administrative Law and Procedure 15A ⚿229

15A Administrative Law and Procedure
15AIII Judicial Remedies Prior to or Pending Administrative Proceedings
15Ak229 k. Exhaustion of Administrative Remedies. Most Cited Cases
Purpose of doctrine of exhaustion of administrative remedies is to avoid premature interruption of the administrative process and to facilitate judicial review and to give agency opportunity to discover and correct its earlier mistakes.

[14] Administrative Law and Procedure 15A ⚿228.1

15A Administrative Law and Procedure
15AIII Judicial Remedies Prior to or Pending Administrative Proceedings
15Ak228.1 k. Primary Jurisdiction. Most Cited Cases
(Formerly 15Ak228)
A party may bypass established avenues for review within administrative agency only when the issue in question cannot be raised from later order of the agency or where the agency has very clearly violated important constitutional or statutory right.

[15] Antitrust and Trade Regulation 29T ⚿955

29T Antitrust and Trade Regulation
29TXVII Antitrust Actions, Proceedings, and Enforcement
29TXVII(A) In General
29Tk955 k. Cease and Desist Orders. Most Cited Cases
(Formerly 382k746 Trade Regulation)
Where litigant in corporate acquisition approval proceeding before Federal Trade Commission had not exhausted its administrative remedies, litigant was not entitled to raise contention before district court that it would be denied fair hearing on the approval because of the Commission's refusal to disclose certain documents relating to another corporate acquisition which the Commission had previously approved. 5 U.S.C.A. § 552(b) (5).

***700 **239** Mr. Lionel Kestenbaum, Washington, D. C., with whom Messrs. Herbert A. Bergson and Murray J. Belman, Washington, D. C., were on the brief, for appellant.

Mr. Robert V. Zener, Atty., Department of Justice, with whom Mr. Thomas A. Flannery, U. S. Atty., was on the brief, for appellees. Messrs. Harold D. Rhynedance, Jr., Alvin L. Berman, and Robert E. Duncan, Attys., Federal Trade Commission, also entered appearances for appellees.

Messrs. Jerrold G. Van Cise, New York City, and Donald J. Mulvihill, Washington, D. C., filed a brief on behalf of Miles Laboratories, Inc., as amicus curiae urging affirmance.

Before BAZELON, Chief Judge, and TAMM and WILKEY, Circuit Judges.

TAMM, Circuit Judge:

In a case now in progress before the Federal Trade Commission (hereinafter "the Commission"), Sterling Drug, Inc. (hereinafter "Sterling") has been ***701 **240** charged with a violation of section 7 of the Clayton Act, 15 U.S.C. § 18 (1964), in connection with its acquisition of Lehn & Fink Products Corporation (hereinafter "Lehn & Fink"). In the course of the proceeding the Commission denied Sterling's request for certain documents which it felt were essential to the presentation of its case. On this appeal Sterling seeks reversal of a District Court decision upholding that order. It claims that the documents are subject to disclosure under the Freedom of Information Act, 5 U.S.C. § 552 (Supp. IV 1969), and, in the alternative, that it will be denied the

full and fair hearing required by the Administrative Procedure Act, 5 U.S.C. § 551 et seq. (1964) if it is not granted access to the documents.

I. *History of the Case*

Sterling manufactures, distributes and sells drug products, household consumer products, and cosmetics throughout the United States. (J.A. 41). In 1966 Sterling acquired Lehn & Fink, whose primary products are "Lysol" brand disinfectants and deodorizers. Lehn & Fink also produces health and beauty aids, acne aids, and external antiseptics, among other products.

On April 12, 1968, the Commission served upon Sterling a complaint alleging that its acquisition of Lehn & Fink violated section 7 of the Clayton Act, 15 U.S.C. § 18 (1964). The complaint charged that the acquisition would have an adverse competitive effect in the markets for household liquids and aerosol disinfectants and deodorizers. There were no allegations of anticompetitive consequences in other fields.

Shortly after the complaint against Sterling was issued, another case involving a diversified drug company came before the Commission. This was the proposed acquisition of S.O.S. Company (hereinafter "S.O.S.") by Miles Laboratories, Inc. (hereinafter "Miles"), a direct competitor of Sterling. General Foods Corporation (hereinafter "General Foods") had originally acquired S.O.S., but it had been ordered to divest itself of the company in an earlier proceeding[FN1] and on July 8, 1968, filed with the Commission an application for approval of Miles as the purchaser. Three days later the Commission approved the divestiture plan, stating that it had "entirely relied upon the information submitted by General Foods and its approval [was] conditioned upon this information being accurate and complete." (J.A. 8.) On September 27, 1968, the Commission received notice that the merger had been consummated.

FN1. General Foods Corp., 68 F.T.C. 581 (Dkt., 8600 1966), aff'd *sub nom.* General Foods Corp. v. FTC, 386 F.2d 936 (3d Cir. 1967), cert. den., 391 U.S. 919, 88 S.Ct. 1805, 20 L.Ed.2d 657 (1968).

In the course of these proceedings Miles twice wrote the Commission requesting that certain documents which it and General Foods had submitted in support of the Miles-S.O.S. merger be considered confidential. Then, on October 25, 1968, General Foods, acting for itself and Miles, formally requested confidential treatment of these documents. The documents were resubmitted as part of the General Foods Final Compliance Report, and on November 29, 1968, the Commission notified General Foods that they would be classified confidential.

Believing that the Miles-S.O.S. merger was very similar to its merger with Lehn & Fink and that the Commission's approval of the former merger was therefore dispositive of the case against it, Sterling petitioned the Commission to close the file on the proposed complaint issued to it and requested a hearing on this petition. On December 2, 1968, the Commission notified Sterling that both its petition to close the file and its request for a hearing were denied.

The Commission eventually issued a formal complaint against Sterling on August 7, 1969. This complaint charged that the Sterling-Lehn & Fink merger would have anti-competitive effects in ***702 **241** three product lines in addition to the one specified in the proposed complaint-household deodorizers. The three additional product lines were health and beauty aids, proprietary drugs and personal care products, and acne aids and external antiseptics.

In its answer to this complaint Sterling asserted two affirmative defenses. It first reiterated its contention that the Commission's approval of the Miles-S.O.S. merger demonstrated that its acquisition of Lehn & Fink did not violate the Clayton Act. Second, it charged that the Commission's issuance of the formal complaint was:

arbitrary and capricious and a denial of due process of law because the drastic revisions and change in theory from the proposed complaint constituted a deliberate

attempt to avoid the consequences of the *Miles-S.O.S.* determination, and to accord diametrically opposing treatment to substantially identical transactions.

(Brief for Appellant at 9.)

To obtain information regarding these defenses, Sterling moved for production and disclosure of the following documents in the Commission's files:

1. All documents submitted to the Commission by General Foods and others concerning the sale of S.O.S. to Miles which were not in the public record.

2. All documents prepared by the Commission or its employees giving findings or reasons for its approval of the Miles-S.O.S. merger or otherwise commenting on this merger.

3. All documents prepared by the Commission or its employees comparing the two mergers.

4. All documents prepared by the Commission or its employees "reflecting the Commission's reasons for (a) limiting its original proposed complaint to the grounds asserted therein or (b) changing the grounds for challenging the subject acquisition from those asserted in its original proposed complaint to those contained in the present complaint."

Sterling's request for these documents was based on the Commission's rules and the Freedom of Information Act.

The Hearing Examiner struck Sterling's affirmative defenses and denied its request for production of documents on the ground that the defenses to which these documents related were no longer in the case. Although he noted that a claim had been made under the Freedom of Information Act, he did not rule upon this claim.

[1] Sterling applied to the Commission for leave to appeal these actions on the part of the Examiner, but this application was denied. In its opinion the Commission said:

The hearing examiner is responsible for framing the issues to be tried and permitting discovery based upon those issues. At present, the examiner is in the process of defining and delineating the issues prior to discovery. By striking respondent's "affirmative defenses" as separate issues, the examiner has not eliminated the substance of those alleged defenses from the hearing. Nothing in the examiner's ruling has foreclosed respondent from arguing any point he wishes to raise concerning the Commission's action in approving Miles Laboratories' acquisition of S.O.S.

(Brief for Appellees at 6.) Like the Hearing Examiner, the Commission did not pass on Sterling's claim under the Freedom of Information Act.[FN2]

FN2. Sterling charges that this failure was a violation of section 5(e) of the Administrative Procedure Act, 5 U.S.C. § 555 (e) (1964), which provides:

Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

Although we feel the Commission should have stated its reasons for denying Sterling's request, it does appear that the reasons for denial were fairly obvious and that Sterling has suffered no hardship by virtue of the Commission's failure in this regard. It would therefore serve no useful purpose to remand the case to the Commission for a statement of the reasons for its denial.

***703 **242** Sterling then requested that the Hearing Examiner include in the contested issues of law and fact a number of issues exploring the similarities between the Miles-S.O.S. and Sterling-Lehn & Fink mergers and also requested admissions from the Commission relating to these issues. The Examiner denied both requests, and the Commission once again denied Sterling permission to appeal his decision. Its rationale was as follows:

The issue in this proceeding is whether [Sterling] has violated Section 7 of the Clayton Act, as amended, not the degree, if any, to which the facts here resemble the facts in the *Miles-S.O.S.* acquisition. [Sterling], therefore, is not entitled to discovery pertaining to the Commission's records or actions in that matter.

(J.A. 39.)

On July 7, 1970, Sterling filed a complaint in the District Court in which it sought to enjoin the Commission from withholding the documents described above. In its complaint Sterling contended that the Commission's apparent conclusion that the Miles-S.O.S. decision was not particularly relevant to its case and its consequent refusal to disclose documents related to that earlier decision would necessarily deny Sterling a fair hearing. It also charged that production of the documents was required under the Freedom of Information Act. The Commission filed a motion to dismiss the complaint, or, in the alternative, for summary judgment, and Miles moved to intervene as a defendant.

The District Court judge did not pass on Miles' motion to intervene. On the merits of the case he first concluded, on the basis of his *in camera* inspection of the documents in question, that they were exempt from disclosure under the Freedom of Information Act. Next, he held that the issue of denial of a fair hearing was not properly before the court because Sterling had failed to exhaust its administrative remedies with regard to this issue. As a result of these rulings, he granted the Commission's motion for summary judgment. This appeal followed.

II. *Sterling's Claim Under the Freedom of Information Act*

[2] The Freedom of Information Act was intended "to increase the citizen's access to government records." Bristol-Myers Co. v. FTC, 138 U.S.App.D.C. 22, 25, 424 F.2d 935, 938, cert. den., 400 U.S. 824, 91 S.Ct. 46, 27 L.Ed.2d 52 (1970). Under the Act federal agencies are required upon proper request to make available to "any person" identifiable records not specifically exempt, 5 U.S.C. § 552(a) (3) (Supp. IV 1969). To insure that the disclosure requirements are liberally construed, Congress provided for de novo review in the District Court whenever an agency fails to produce documents, with the agency having the burden of proving that the documents are exempt.

The Commission contends that two exemptions to the disclosure requirements of § 552(a) (3) are applicable in this case. The first of these is the exemption for "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b) (5) (Supp. IV 1969). According to the Commission, its memoranda containing analyses and recommendations with regard to the *Miles-S.O.S.* and *Sterling-Lehn & Fink* cases fall within this exemption. The District Court agreed with the Commission, concluding as follows:

[These documents] are not "purely factual reports and scientific studies" (***704**243**Bristol-Myers Company v. Federal Trade Commission, 138 U.S.App.D.C. 22, 26, 424 F.2d 935, 939 (1970)), but are in fact "'those internal working papers in which opinions are expressed and policies formulated and recommended.'" *Bristol-Myers, supra,* citing Ackerly v. Ley, 137 U.S.App.D.C. 133, 138, 420 F.2d 1336, 1341 (1969). (J.A. 77.)

[3][4] Sterling attacks the decision below on several grounds. To begin with, it alleges that the District Court judge did not follow the proper procedures for passing on a claim under the Freedom of Information Act. Citing our decisions in *Bristol-Myers, supra,* and Grumman Aircraft Engineering Corp. v. Renegotiation Bd., 138 U.S.App.D.C. 147, 425 F.2d 578 (1970), Sterling

contends that the District Court judge failed to take the required steps of stating his reasons for concluding that an exemption applied to the documents in question and of considering whether disclosure of the documents would be proper if certain deletions were made. With regard to the first contention, we feel that the judge's statement that the documents in question were "internal working papers in which opinions are expressed and policies formulated and recommended" clearly indicates the basis for his decision. We must agree, however, that there is no indication in the opinion below that the judge considered the possibility of deleting portions of the documents. It may well be that making deletions would not change the character of these documents, since they appear to consist primarily of the thoughts and recommendations of the Commission and its staff. However, there may be appendices or statements of facts which are clearly subject to disclosure. *See* Soucie v. David, 145 U.S.App.D.C. ___ at ___, 448 F.2d 1067 at 1078 (1971). We must therefore remand the case so that the District Court judge can consider this possibility and state in his opinion that he has done so.

[5][6] Sterling's next contention relates to that portion of § 552(b) (5) which states that the exemption is applicable only to those internal memoranda "not * * * available by law to a party other than an agency." Sterling interprets this language as meaning that it is entitled to inspect the Commission memoranda under the Act if it has the right to discover these documents in its present suit against the Commission, but we believe this interpretation to be incorrect.[FN3] The language in question is admittedly somewhat difficult to interpret because many documents cannot in the abstract be said to be either available "by law" or unavailable "by law"; their discoverability is dependent upon the showing of need made by the litigant. Davis, The Information Act: A Preliminary Analysis, 34 U.Chi.L.Rev. 761, 795 (1967). However, Congress' description of those entitled to disclosure under the Act[FN4] and earlier cases decided by this ***705 **244** court [FN5] clearly indicate that disclosure under the Act is not to depend upon the needs of a particular litigant. The correct test for determining which documents are not exempt under § 552(b) (5) is given in the House Committee's report on the section, which states that "any internal memorandums which would routinely be disclosed to a private party through the discovery process in litigation with the agency would be available to the general public." H.R.Rep.No. 1497, 89th Cong., 2d Sess. 10 (1966), U.S.Code Congressional & Admin.News, p. 2428. The question for decision is thus whether "'a private party'-not necessarily the applicant-would routinely be entitled to [the Commission memoranda] through discovery." *Davis, supra,* 796. The clear answer is that he would not be so entitled. While some cases suggest that government memoranda containing legal analyses and recommendations may in some circumstances be subject to discovery,[FN6] it is beyond question that granting discovery of such documents is a very extraordinary step, not a routine one. Accordingly, we conclude that the Commission memoranda in question here are the type which sould be exempt under § 552(b) (5).

FN3. The documents might well be exempt even under Sterling's interpretation of the statute, for there is considerable doubt that Sterling is entitled to discovery of the documents in its current case against the Commission. We will discuss this issue in the third portion of our opinion.

FN4. But when a memorandum or letter would be subject to discovery by a party whose need for it is strong but not by a party whose need for it is weak, should the agency disclose it, refuse disclosure, or apply discovery law to the facts about the particular applicant? The last course seems desirable, but the Act seems to forbid that course, for it requires disclosure to "any person" and it replaces the statutory words "persons properly, and directly concerned." [FN90] The

90. The Senate committee said the bill "eliminates the test of who shall have the right to different information." Sen.Rep. 5. The House committee emphasized the same thought. House Rep. 8.

applicant's need cannot be the test. The agency cannot say that one person is "any person" but that another person is not.

> But since the purpose of the exemptions is to cut down the requirement of disclosure to "any person," the purpose of the fifth exemption could be to whittle down the "any person" requirement so that, in effect, only a person with a strong enough interest is entitled to disclosure of a memorandum or letter. This idea makes practical sense, but it is contrary to the words of the fifth exemption. The key words are "a private party." The words are not "the applicant" or "the party requesting disclosure." The focus is not on the applicant but on an abstract person, "a private party."
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> Davis, *supra,* at 795-796.

FN5. Soucie v. David, *supra;* Grumman Aircraft Engineering Corp. v. Renegotiation Bd., *supra.*

FN6. *See* Carl Zeiss Stiftung v. Carl Zeiss Jena, 40 F.R.D. 318 (D.D.C.1966); Lykes Corp. and Lykes Bros. Steamship Co., 185 Ct.Cl. 792 (1968); Weiss v. United States, 180 Ct.Cl. 863 (1967).

This conclusion would seem to resolve the matter, but Sterling makes a further argument for the proposition that many if not all of the Commission memoranda it seeks must be disclosed even though they would normally be exempt under § 552(b) (5). As we noted earlier, the Commission did not issue an opinion giving the reasons for the *Miles-S.O.S.* decision, and Sterling believes that these reasons must of necessity be contained in the documents it seeks and that these documents must be disclosed "in order to provide access to the basis for the agency decision and its rationale." (Brief for Appellant at 23.) In support of this line of reasoning, Sterling cites our opinion in American Mail Line, Ltd. v. Gulick, 133 U.S.App.D.C. 382, 411 F.2d 696 (1968).

In *Gulick* the only document involved was a memorandum which the Maritime Subsidy Board of the Department of Commerce had clearly incorporated into one of its decisions, stating that its decision was based on the memorandum and setting forth the last five pages of the memorandum as its own findings and conclusions. We held that in those circumstances the memorandum was not an intra-agency memorandum exempt under § 552(b) (5) but a portion of an agency order specifically subject to disclosure under § 552(a) (2) (A), which requires federal agencies to disclose to any person upon request all "final opinions, * * as well as orders, made in the adjudication of cases." Our reasoning was as follows:

> If the Maritime Subsidy Board did not want to expose its staff's memorandum to public scrutiny it should not have stated publicly in its April 11 ruling that its action was based upon that memorandum, giving no other reasons or basis for its action. When it chose this course of action "as a matter of convenience" (Brief for Appellee at 9) the memorandum lost its intra-agency status and became a public record, one which must be disclosed to appellants. Thus, we conclude that the Board's April 11 ruling clearly falls within the ***706 **245** confines of 5 U.S.C. § 552(a) (2) (A) and consequently it must be produced for public inspection.
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> (133 U.S.App.D.C. at 389, 411 F.2d at 703.)

In discussing the applicability of *Gulick* to the case at hand, we feel it is necessary to divide the Commission memoranda into three categories-those prepared by the Commission staff, those prepared by individual members of the Commission, and those prepared, or at least issued, by the Commission itself. FN7 With regard to the first category, we do not believe *Gulick* supports appellant's position. Here the Commission has not indicated publicly that staff memoranda contained the rationale for this decision,FN8 and we do not agree with Sterling's assertion that this must of necessity be the case. To begin with, most of these memoranda were written after the Commission's decision in Miles-S.O.S. and were directed toward the litigation in the Sterling-Lehn & Fink case. While these later memoranda contain analyses of the earlier decision, many of these analyses might well be based only on the staff's speculations as to the reasons underlying the decision and not on the reasons which actually motivated the Commission. Even if the Commission furnished its staff with a statement of its reasons for the Miles-S.O.S. decision, the staff

memoranda might still be misleading and incomplete, for in them the staff was not attempting to state these reasons in the abstract, but was applying them to Sterling's acquisition of Lehn & Fink. Instead of granting the public access to documents of such questionable validity, it would seem more logical to allow inspection of the memorandum from the Commission disclosing the grounds for its decision, assuming for the moment that such a memorandum exists. We will, of course discuss this subject further below.

FN7. Although the dissenting opinion herein characterizes our classification of the material involved as an "artificial division" of this material, it simultaneously accepts our third division as "consistent with the act." We cannot accept the dissent as to the first two categories as logical, reasoned or correct. The rationale of this division, which refutes the idea of artificiality, is that categories one and two are not *policy* unless adopted by the Commission. If the memoranda classified as categories one and two are adopted by the Commission, then they might be required to be produced, because the adoption does make them policy and they then fall within the productive category. This was precisely the rationale of *Gulick,* on which we of the majority rely. As we read the dissenting opinion's footnote 8 it is consistent with our opinion since we are doing precisely what the last two sentences of dissenting footnote 8 say is the correct rationale.

FN8. In note 11, *infra,* we deal with the possibility that the Commission made such an indication in the inter-agency memoranda which it issued.

The staff memoranda submitted to the Commission prior to the Miles-S.O.S. decision undoubtedly contain ideas which affected that decision to some extent. However, our experience with the decision-making process leads us to believe that the material in these memoranda was probably filtered and refined by the Commission, with the result that its ultimate decision was something more than, or at least different from, the sum of its "parts." Consequently, we doubt that examination of the "parts" would give a very accurate picture of the decision.

[7][8][9] On the negative side, disclosure of documents such as the staff memoranda at issue here might well have a detrimental effect on an agency's decision-making process. Congress' primary purpose in drafting § 552(b)(5) was to insure that federal agencies continued to enjoy the free flow of ideas essential to the making of reasoned decisions. Thus, the House Committee Report on the section states:

[A] full and frank exchange of opinions would be impossible if all internal communications were made public. [Agency witnesses] contended, and with merit, that advice from staff assistants and the exchange of ideas ***707 **246** among agency personnel would not be completely frank if they were forced "to operate in fishbowl."

H.R.Rep.No.1497, 89th Cong., 2d Sess. 10 (1966) U.S.Code Congressional and Administrative News, p. 2427. Authorizing disclosure of the staff memoranda would appear to run counter to this Congressional expression of policy. Sterling contends this is not the case, however. Its theory is that disclosure is only warranted in this case because the Commission did not issue an opinion giving the reason for its *Miles-S.O.S.* decision and that requiring disclosure in this case and others like it will have the salutary effect of requiring agencies to issue an opinion with every order. Although persuasive in the abstract, this reasoning is unrealistic when applied to the everyday world of overburdened administrative agencies.[FN9] Agencies are required to issue opinions with many of their orders,[FN10] but it is completely unreasonable to suppose that every agency order can be accompanied by an opinion. The probable effect of a decision requiring disclosure of the staff memoranda would thus be to inhibit "a full and frank exchange of opinions" at least in that class of cases where opinions are not, and as practical matter cannot be, issued. We decline to make such a decision. Accordingly, we hold that the staff memoranda are not subject to disclosure under *Gulick.* [FN11]

FN9. The Social Security Administration issues more than four million orders a year, the Bureau of Customs three million orders, the Department of Agriculture two million feed grain and wheat diversion orders, and the FCC more than one million licenses (each an order).

Davis, *supra,* at 782.

FN10. Section 5(e) of the Administrative Procedure Act, 5 U.S.C. § 555(e) (1964), provides that agencies must give a brief statement of their reasons when they deny "a written application, petition, or other request of an interested person made in connection with any agency proceeding." (*See* note 2, *supra.*) Agency rules require the issuance of opinions with certain other orders. In fact, since its approval of the Miles-S.O.S. merger the Commission has enacted a rule requiring that decisions approving such mergers be accompanied by a "statement of supporting reasons." 16 C.F.R. 3.61(e) (1971). Finally, procedural due process may require agencies to issue opinions in some cases not covered by statute or rule.

FN11. This holding and our subsequent holding that *Gulick* also does not require disclosure of the individual Commissioner's memoranda are, however, subject to the proviso that the memoranda issued by the Commission do not specifically indicate that reasons for its decisions in *Miles-S.O.S* are spelled out in one or more of the other inter-agency memoranda. If it develops on remand that the Commission has referred to memoranda in this manner, then any memoranda referred to, or the relevant portions thereof, must be disclosed. *Gulick* does not by its express terms require this result, since in that case we relied to some extent on the fact that the agency document containing the reference to staff memoranda was made public. The result is nonetheless necessary to prevent the development of secret law within the Commission. *See* pages 709, 710, *infra.*

[10] We also feel that *Gulick* does not compel disclosure of the two memoranda written by individual Commissioners. Although the Commissioners were obviously parties to the *Miles-S.O.S.* decision and probably discussed the grounds for that decision to some extent in their memoranda, these memoranda do not necessarily contain a full and accurate account of the grounds for the decision. The Commissioners may have intended to give only a brief summary of Miles-S.O.S. in their memoranda. Moreover, since different Commissioners may have approved the merger for different reasons, the two memoranda at issue may provide only the individual Commissioner's reasons for approving the decision, not the reasons of the Commission as a whole. Finally, both memoranda contain comparisons of the Miles-S.O.S. and Sterling-Lehn & Fink cases, and it may well be that in making their comparisons the Commissioners emphasized certain principles underlying the earlier decision while neglecting others. In sum, then, we believe it is questionable ***708 **247** whether the memoranda prepared by the individual Commissioners accurately reflect the grounds for the Commission's decision in *Miles-S.O.S.*

The possible inaccuracies and omissions in these memoranda are not, however, the most important consideration affecting our conclusion that they need not be disclosed. We are primarily motivated by our belief that there is a great need to preserve the free flow of ideas between Commissioners. As we have noted, Congress expressly indicated that intra-agency communications of thoughts and opinions are to be protected, and nowhere is that protection more needed than between the ultimate decision-makers within an agency. In most agencies the exchange of views between Commissioners or Board members is considered perhaps the most essential element in the decisional process. Thus, continual expression of ideas and strong advocacy of positions are to be encouraged to the fullest at this level. In our opinion any attempt to separate a Commissioner's statements as to the basis for a past decision from his views regarding the disposition of a current case and to disclose the former might well infringe upon these essential communications. We therefore conclude that Gulick should not be extended to require that such attempts be

made.

[11] With regard to the memoranda issued by the Commission, however, we think the philosophy underlying *Gulick* requires a different result. These memoranda were prepared by the individuals directly responsible for the *Miles-S.O.S.* decision and, as documents emanating from the Commission as a whole, they are presumably neither argumentative in nature nor slanted to reflect a particular Commissioner's view. Hence, the danger that any explanation they may give of Miles-S.O.S. is not the correct one is greatly reduced. We also feel the policy of promoting the free flow of ideas within the agency does not apply here, for private transmittals of binding agency opinions and interpretations should not be encouraged. These are not the ideas and theories which go into the making of the law, they are the law itself, and as such should be made available to the public. Thus, to prevent the development of secret law within the Commission, we must require it to disclose orders and interpretations which it actually applies in cases before it. *See generally* Davis, *supra* at 797. On remand, then, the District Court judge should re-examine the memoranda issued by the Commission to determine whether they do in fact contain such material. If they do, this material must be made available to Sterling. Moreover, as we have already noted, if the Commission memoranda specifically indicate that reasons for its Miles-S.O.S. decision are contained in one or more of the memoranda prepared by individual members of the Commission or its staff, these memoranda, or the relevant portions thereof, must also be disclosed.

[12] The Commission contends that the remaining documents at issue in this case fall within the exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b) (4) (Supp. IV 1969). These are the documents contained in the General Foods Final Compliance Report. They were described by the District Court judge as follows:

1. *Numbered paragraphs 3(b) and 4 of Exhibit VII of a document dated July 5, 1968 entitled "Memorandums on Divestiture of S.O.S. Business by General Foods Corporation."* Paragraph 3(b) indicates the markets shares of certain Miles Laboratory products, i.e. ALKA-SELTZER, ONE-A-DAY, and CHOCKS. Paragraph 4 reflects the dollar amounts of sales of certain products between Miles Laboratories and General Foods.

2. *Report dated May 27, 1968, entitled "The S.O.S. Business."* This item contains a breakdown of sales and profit data for each S.O.S. product over the ten year period, 1959-1968.

***709 **248** 3. *Report dated June 3, 1968, entitled "The S.O.S. Business-Index to Exhibits"*, contains breakdown of sales, cost and profit data by product and customer classification.

4. *S.O.S. Offers at July 8, 1968.* This item lists the bids submitted to General Foods on a closed basis. The amounts of the various bids-not the names of the bidders-were labelled confidential.

(J.A. 72.)

We feel the District Court judge was correct in his conclusion that these documents are covered by § 552(b) (4). The Senate Reports on the Freedom of Information Act describe the purpose of this section as follows:

This exception is necessary to protect the confidentiality of information which is obtained by the Government through questionnaires or other inquiries, but which would customarily not be released to the public by the person from whom it was obtained. *This would include business sales statistics,* inventories, customer lists, and manufacturing processes. * * *

S.Rep.No.813, 89th Cong., 2d Sess. 9 (1964). The House Reports add:
It would also include information which is given to an agency in confidence, since a citizen must be able to confide in his Government. Moreover, where the Government has obligated itself in good faith not to

disclose documents or information which it receives, it should be able to honor such obligations.

H.R.Rep.No.1497, 89th Cong., 2d Sess. 10 (1964). The documents involved here contain information concerning business sales. Moreover, both Miles and General Foods have sought to prevent public disclosure of these documents, and the Commission has agreed to treat them as confidential. Sterling contends that the Commission's decision regarding the confidentiality of the documents was made in connection with the transfer of S.O.S. to Miles and that even if that initial decision was correct, the reasons for it "no longer obtain so long after the transfer has been made, and so long after the trade information was current." (Brief for Appellant at 25.) However, judging from the District Court judge's descriptions of these documents and from Miles' continuing efforts to prevent disclosure of them, we conclude that the information contained therein remains the type "which would customarily not be released to the public by the person from whom it was obtained."

The judge's descriptions also lead us to believe that making deletions will not render the documents subject to disclosure under the Act. Sterling apparently agrees, for it does not raise this point.

Sterling does, however, argue once again that these documents, though otherwise exempt, are subject to disclosure under *Gulick*. In doing so it relies very heavily on the Commission's statement that in approving the sale of S.O.S. to Miles it "entirely relied upon the information submitted by General Foods and its approval is conditioned upon this information being accurate and complete." (J.A. 8.) Sterling equates this statement with one made by the Maritime Subsidy Board which we commented upon as follows in our *Gulick* opinion:

If the Maritime Subsidy Board did not want to expose its staff's memorandum to public scrutiny it should not have stated publicly in its April 11 ruling that its action was based on that memorandum, giving no other reasons or basis for its action.

(133 U.S.App.D.C. at 389, 411 F.2d at 703.) We do not believe the two statements are comparable, however. The clear intent of the Maritime Subsidy Board was to indicate that the reasons underlying its decision were embodied in the earlier memorandum. The purpose of the Commission's statement concerning its *Miles-S.O.S.* decision was, on the other hand, merely to indicate that it would later reopen this decision if it discovered that the facts presented by General Foods were not accurate. It is ludicrous to imply from this statement that every particle of information submitted ***710 **249** by General Foods was essential to the Commission's decision. Moreover, even if such an implication were feasible, we would be unwilling to lay down a rule whereby an agency would be required to disclose confidential commercial or financial information which it received and relied on in making a decision, yet would not be required to disclose similar information which it did not rely upon; we see no rational reason for drawing such a distinction. For that reason the relevant documents in the General Foods Final Compliance Report are exempt from disclosure under the Freedom of Information Act and unaffected by our decision in *Gulick*.

III. *Sterling's Claim of Denial of a Fair Hearing*

Before reaching the question whether the Commission's refusal to consider the *Miles-S.O.S.* decision a highly relevant precedent and whether to disclose the documents Sterling seeks will deny it a fair hearing, we must first ascertain whether the District Court Judge had jurisdiction to consider this question at this interlocutory stage of the Commission proceedings. He concluded that he did not have jurisdiction because Sterling had not exhausted its administrative remedies, and we agree with this conclusion.

[13] The reasons for requiring exhaustion of administrative remedies were set forth recently by the Supreme Court in McKart v. United States, 395 U.S. 185, 89 S.Ct. 1657, 23 L.Ed.2d 194 (1969). The primary purpose served by the doctrine appears to be "the avoidance of premature interruption of the administrative process." *Id.* at 193, 89 S.Ct. at 1662. As the Court said:

The agency, like a trial court, is created for the purpose of applying a statute in the first instance. Accordingly, it is normally desirable to let the agency develop the necessary factual background upon which decisions should be based. And since agency decisions are frequently of a discretionary nature or frequently require expertise, the agency should be given the first chance to exercise that discretion or to apply that expertise. And of course it is generally more efficient for the administrative process to go forward without interruption than it is to permit the parties to seek aid from the courts at various intermediate stages.

Id. at 193-194, 89 S.Ct. at 1662. Exhaustion is also required to facilitate judicial review, which "may [otherwise] be hindered by the failure of the litigant to allow the agency to make a factual record, or to exercise its discretion or apply its expertise." *Id.* at 194, 89 S.Ct. at 1663. Interests of judicial economy are also served. If the agency discovers and corrects its earlier mistakes or the complaining party prevails in the later administrative proceedings, judicial review may well be unnecessary.

[14] In applying these principles in cases involving interlocutory appeals from agency action, the courts appear to have formulated the general rule that a party may bypass established avenues for review within the agency only where the issue in question cannot be raised from a later order of the agency, Jewel Companies, Inc. v. FTC, 432 F.2d 1155 (7th Cir. 1970); Elmo Division of Drive-X Co. v. Dixon, 121 U.S.App.D.C. 113, 348 F.2d 342 (1965), or where the agency has very clearly violated an important constitutional or statutory right. Amos Treat & Co. v. SEC, 113 U.S.App.D.C. 100, 306 F.2d 260 (1962). *See also* Oestereich v. Selective Service System Local Bd., 393 U.S. 233, 89 S.Ct. 414, 21 L.Ed.2d 402 (1960); Leedom v. Kyne, 358 U.S. 184, 79 S.Ct. 180, 3 L.Ed.2d 210 (1958). Some cases, including *McKart*, suggest that judicial intervention may also be proper even though the agency action is not clearly illegal if the question involved is a strictly legal one not involving the agency's expertise or requiring for their decision the development of other factual or legal issues. The rationale for this extension of the general rule is that "judicial review [of these questions] would not be significantly***711 **250** aided by an additional administrative decision" McKart v. United States, *supra*, 395 U.S. at 199, 89 S.Ct. at 1665; hence, the additional decision is not required.

[15] In view of the judicial principles and practices discussed above, the requirement that administrative remedies be exhausted appears applicable here. The Commission may reverse its position with regard to the issue before us or may eventually uphold the Sterling-Lehn & Fink merger. If either event comes to pass, there will be no need for Sterling to seek judicial review. If neither occurs, Sterling will be able to raise the due process issue on appeal from the Commission's final order in the case. At that time we will have before us the entire record of the proceedings and the Commission's rulings and will thus be qualified to determine whether Sterling received a fair hearing. This is not such a strictly legal question that it can be properly decided on the incomplete facts and argument now before us. Accordingly, we feel its resolution should be deferred until the Commission proceedings have run their course.

Sterling disputes this reasoning on at least two grounds. To begin with, Sterling contends that requiring exhaustion of remedies so that a full record may be developed is not a sound policy here because it is so handicapped by its inability to know the basis of the *Miles-S.O.S.* decision that it cannot present a proper case. As a result, we will, according to Sterling, be unable "accurately to appraise the relevance of the undisclosed *Miles-S.O.S.* information or the prejudice to Sterling resulting from its exclusion." (Brief for Appellant at 31.) We do not agree with this appraisal. If on a later appeal Sterling raises the issue of the fairness of the hearing it received before the Commission, we will not simply determine the extent to which the *Miles-S.O.S.* case should be regarded as a precedent, as Sterling seems to think, but whether Sterling had sufficient evidence to argue the precedential value of that case. Moreover, we are fully aware that the Commission did not set forth its reasons for approving the Miles-S.O.S. merger and we will closely scrutinize whatever efforts it may make to distinguish that case if called upon to do so. It is thus our opinion that there are benefits to be gained from requiring exhaustion of remedies and that Sterling will not be unduly prejudiced by being required to proceed through the established administrative channels.

Sterling's second point is that raising the due process issue on appeal from the Commission's final order in this case will not provide it an adequate remedy because we may well be required to apply a narrow standard of review at that later date. According to Sterling, our review may be limited because of the general rule that, absent a patent abuse of discretion, the Commission has discretion to proceed against one party without acting against others similarly situated. *E. g.*, FTC v. Universal-Rundle Corp., 387 U.S. 244, 250, 87 S.Ct. 1622, 18 L.Ed.2d 249 (1967). It fears that the Commission's approval of the sale of S.O.S. to Miles may be equated with the Commission's not attacking a merger so that the "patent abuse" test applies.[FN12] Even if it were clear that ***712 **251** Sterling's fears would be realized, which it is not, we do not feel the exhaustion of remedies question would be affected. The fact that an agency is not required to treat similarly situated parties the same certainly does not bolster one party's argument that he should be granted access to information which allegedly explains how another party was treated. Moreover, if Sterling continues to feel that it "is being denied access to evidence which might demonstrate the patent abuse required by *Universal-Rundle*" (Brief for Appellant at 32), it can raise this issue on appeal from the Commission's final order when a full record has been made.[FN13]

> FN12. There is some indication that the Commission feels that these two situations are comparable. Its brief contains the following passage:
>
> Then again, the Commission may hold that Sterling has violated Section 7 and may agree that the Miles-S.O.S. situation is similar, but may go on to explain that the sale of S.O.S. to Miles was approved not because of a finding that it did not violate Section 7, but rather because Miles was the least objectionable feasible purchaser of the S.O.S. business; and it was deemed preferable to have Miles purchase the business rather than having the divestiture order against General Foods fail because of lack of purchasers. This, indeed, would be consistent with the Commission's statement in its latest interlocutory order that the possible resemblance of the facts of Miles-S.O.S. to the fact of Sterling-Lehn & Fink is not pertinent. * * *
>
> (Brief for Appellee at 26.) Of course, if the Commission does ultimately conclude that the "patent abuse" test applies in this situation, this conclusion will be subject to judicial review.
>
> FN13. There are also some indications that Sterling feels the limited standard of review generally applicable to final agency orders will prevent it from obtaining full review of its claim of denial of a fair hearing on a later appeal. However, the rule that agency decisions must be affirmed if supported by adequate findings of fact and substantial evidence in the record obviously does not apply where a proper hearing has not been held.

We thus conclude that the District Court judge correctly ruled that he did not have jurisdiction to decide whether the Commission's refusal to grant Sterling access to the documents in question would deny Sterling a fair hearing. However, since it is necessary for the judge to make further findings regarding Sterling's right to some of these documents under the Freedom of Information Act, we must require a remand.

Remanded for proceedings consistent with this opinion.

BAZELON, Chief Judge (concurring in part and dissenting in part):

Sterling Drug, Inc. contends that the Freedom of Information Act, 5 U.S.C. § 552 (1970), requires the Federal Trade Commission to disclose two types of documents:[FN1] first, Commission-prepared papers which allegedly described the rationale for the Commission's approval of a merger between Miles Laboratories and S.O.S.; and second, statements submitted to the Commission in connection with the Miles-S.O.S. merger and which were apparently relevant to the Commission's review of that merger.[FN2] The Commission refused disclosure on the grounds that the documents fall within the Act's exemptions for intra-agency memoranda,[FN3] or confidential financial information. [FN4] Thus, the interpretation of these exemptions lies at the heart of this

controversy, and I respectfully disagree with the interpretation put forward by the Court.

FN1. Sterling contends alternatively that absent disclosure it will be denied the full and fair hearing required by the Administrative Procedure Act, 5 U.S.C. § 551 et seq. (1970). I agree with the Court that consideration of this alternative claim is barred by the failure to exhaust administrative remedies.

FN2. Shortly after issuing a complaint charging that the acquisition by Sterling Drug of Lehn & Fink violated Section 7 of the Clayton Act, 15 U.S.C. § 18 (1964), the FTC approved without opinion a divestiture plan in another case calling for the sale of the S.O.S. Company to Miles. In the proceedings before the Commission, Sterling has taken the position that the approval of the Miles-S.O.S. merger demonstrates that its acquisition of Lehn & Fink did not violate the Clayton Act. Sterling seeks disclosure in order to show that both mergers involve factors which require application of the same policy and result.

FN3. 5 U.S.C. § 552(b) (5) (Supp. IV 1969).

FN4. 5 U.S.C. § 522(b) (4) (Supp. IV 1969).

I.

The Freedom of Information Act requires disclosure of each agency's

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

***713 **252** (B) those statements of policy and interpretation which have been adopted by the agency and are not published in the Federal Register.

§ 552(a) (2) (A-B). It then exempts from disclosure "inter-agency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." § 552(b) (5). FN5

FN5. Contrary to my view, the Court concludes that most of the documents are "memorandums" within the terms of the exemption. It then goes on to consider the explicit limitation on the exemption. By its terms the exemption protects only those "memorandums" which "would not be available by law to a party other than an agency in litigation with an agency." The Court construes this awkward phrase to mean that only those memoranda which would be routinely available through discovery in litigation-without regard to special need-fall outside the exemption. I agree. Whether or not the purpose of the Act would have been better served by allowing courts to apply discovery law to the facts of the particular applicant, that course is prohibited by the language of the Act and its legislative history.

In Bristol-Myers Co. v. FTC, 138 U.S. App.D.C. 22, 424 F.2d 935 (1970) we pointed out that the inter-agency memorandum exemption was designed to encourage "the free exchange of ideas among government policy makers."FN6 But it should be clear that Congress hoped to encourage discourse during the *policy formulation stage;* the exemption was not designed to facilitate the easy exchange of substantive declarations of policy. Indeed, if it were, the exemption would have engulfed the rule. For at the same time that Congress sought to enhance the process of policy formulation, it indicated unequivocally that the purpose of the Act was to forbid secret *law.*FN7 And substantive declarations of policy are clearly "law" within the meaning of that prohibition. It necessarily follows that opinions and statements of policy must be disclosed while memoranda drafted as part of the agency's process of formulating such policy need not.FN8

FN6. 138 U.S.App.D.C. at 26, 424 F.2d at 939.

See S.Rep.No.813, 89th Cong., 1st Sess. 9 (1965); H.Rep.No.1497, 89th Cong., 1st Sess. 10 (1965).

FN7. "The governing principle, which I think is without exception, is that secret law is forbidden." K. Davis, Administrative Law Treatise, § 3A.21 at 159 (1970 Supp.). Such an accommodation comports with this Court's earlier holding that "[t]he legislative plan creates a liberal disclosure requirement, limited only by specific exemptions which are to be narrowly construed." Bristol-Myers v. FTC, *supra*, 138 U.S.App.D.C. at 25, 424 F.2d at 938. *See* Soucie v. David, 145 U.S.App.D.C. , at , 448 F.2d 1067, at 1080 (1971).

FN8. Davis, supra note 7, at 159. The application of this principle is not limited to the precise facts in American Mail Line, Ltd. v. Gulick, 133 U.S.App.D.C. 382, 411 F.2d 696 (1968). In *Gulick* the Maritime Subsidy Board specifically stated that its decision was based upon the memorandum sought disclosed, and quoted the last five pages of the memorandum as its own findings and determination. In this situation it was clear that the memorandum was substantive law adopted by the agency rather than a recommendation or step in the process of formulating policy. Accordingly, the Court ordered disclosure. It is crucial, however, to understand the limited significance of both the Board's reference to the memoranda as the basis of its decision and its extensive quotation from it. By doing so, the Board made it obvious that the memoranda had been adopted as policy. It is the *adoption* of a memorandum as policy, however, and not the particular manner in which the adoption is indicated which is the touchstone of disclosure.

Instead of asking whether any of the documents at issue were in substance policy declarations which should be disclosed, the Court makes an artificial division of the material into three categories: first, memoranda prepared by the Commission staff; second, memoranda prepared by individual members of the Commission; and third, memoranda issued by the Commission itself. The Court's treatment of documents in the third category-remanding them to the District Court to determine whether they contain binding opinions or statements of policy and interpretation-is consistent with ***714 **253** the purposes of the Act. But I disagree strongly with the Court's conclusion that memoranda falling within the first or second categories need never be disclosed.

The Court denies access to memoranda of staff and individual Commissioners primarily on the ground that the memoranda may not accurately reflect the decision of the Commission. I agree that the scheme of the Act exempts memoranda which are wholly preliminary or tentative in character, but I insist that the Act does require disclosure where the memoranda reveal opinions or policy statements which provided the basis for the administrative action in question. The Court seems to concede the point since it follows *Gulick* by allowing disclosure of memoranda within the forbidden categories if they are *specifically referred to* in memoranda within the nonforbidden category. [FN9] But *Gulick* was, after all, a fairly easy application of the statutory principle, and I can see no reason to read the facts of that particular case as marking the outer limits of the statute's reach. If these memoranda were in fact treated as having been adopted by the agency-as indicated by an affidavit of the Commission or testimony at the remand hearing-then the statute would clearly require disclosure even though the documents had never been referred to in other Commission memoranda.[FN10] Indeed, the Court recognizes that a particular document must be disclosed if it was *adopted* by the Commission, regardless of how that adoption is indicated.[FN11]

FN9. *See* note 11 of the opinion of the Court.

FN10. See note 8 *supra*. The Ninth Circuit seems to have reached the result I suggest in General Services Administration v. Benson, 415 F.2d 878 (9th Cir. 1969). With reference to documents that had apparently never been made public or referred to by the agency, the court stated:

> For example, exhibits A and B, described in Benson v. General Services Administration, D.C., 289 F.Supp. 590, 591, are not merely advisory opinions submitted for policy making purposes. Rather once exhibit A (the disposal plan) was approved, "it was to be followed by the regional office in making the disposal;" and the memorandum described as exhibit B "was used as a guide for higher authority and as a record of the reasons for the action taken." Thus, documents A and B took on the character of "statements of policy and interpretation which have been adopted by the agency and are not published in the Federal Register"-a category of materials specifically available to the public under 5 U.S.C. § 552(a) (2) (B).
>
> *Id.* at 881.
>
> FN11. See note 7 of the opinion of the Court.

It follows that the case should be remanded with an instruction to determine whether *any* of the documents, regardless of artificial categories or labels, are "opinions" or "statements of policy and interpretation."[FN12] In making this determination, the burden of proof is upon the Commission. § 552(a) (3). If it seeks to withhold *all* of the memoranda, the Commission must show that an accurate statement of either the reasons for or the policies adopted by its approval of the Miles-S.O.S. merger *does not exist.*[FN13] Although proof may be made by ***715 **254** affidavit, a bare statement that the documents are within the exemption is insufficient. *See* Affidavit of Joseph Shea, Secretary of the Federal Trade Commission, Joint Appendix at 52.

> FN12. The Court would deny access to the statements issued by the individual Commissioners on the possibility that "[s]ince different Commissioners may have approved the merger for different reasons, the two memoranda at issue may provide only the individual Commissioner's reasons for approving the decision, not the reasons of the Commission as a whole." Opinion of the Court at 707. I submit, however, that if the memoranda in fact provide the reasons for the vote of the individual Commissioners to approve or disapprove the merger, they fall directly within the terms of the statute since subsection (a) (2) (A) provides for disclosure of "final opinions, *including concurring and dissenting opinions.*" (Emphasis added).
>
> FN13. If the Commission had issued either an opinion or statement of reasons with its order approving the Miles-S.O.S. merger, there would have been no necessity to disclose the underlying memoranda. The Court says that it is unrealistic to require an opinion or statement to protect agency documents since some agencies, such as the Social Security Administration, issue millions of orders each year. Opinion of the Court at 14, 14n.9. Unlike the Social Security Administration, the Federal Trade Commission does not issue millions of orders of the type involved here. Indeed, as of 1965, the F.T.C. brought only 23 Section 7 cases which culminated in finding a violation or the entry of a consent decree. And only some fewer number resulted in the eventual approval of a divestiture purchaser. Elzinga, The Antimerger Law: Pyrrhic Victories?, 12 J. of Law & Econ. 43 (1969). In those agencies where millions of orders are issued the likelihood is that extensive memoranda are not written or required because decisions are made simply on the basis of staff manuals, already required to be disclosed, § 552(a) (2) (C).

II.

The Commission also refused Sterling's request for various documents submitted to the Commission by General Foods and others in connection with Miles' Purchase of S.O.S. and contained in the General Foods Final Compliance Report.[FN14] I agree with the Court that at this stage of the controversy these documents fall within the confidential financial information exemption. § 552 (b) (4). But if on remand the District Court finds that one or more of the Commission prepared documents

are "opinions" or "statements of policy and interpretation," it may well also find that they contain sales, cost, or profit data derived from documents in the Compliance Report. The statute provides:

> FN14. These documents are described at page 708 of the Court's opinion.

To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual.
§ 552(a) (2). *See* Grumman Aircraft Engineering Corp. v. Renegotiation Board, 138 U.S.App.D.C. 147, 425 F.2d 578 (1970).

In this case, however, deletion is unlikely to provide a viable course. Deletion of names[FN15] would at this stage be fruitless, and deletion of the data, given the nature of Section 7 litigation, would likely render the opinion or interpretation meaningless. In such a situation the language of the statute, unlike that found in the confidential financial information exemption, [FN16] directs the court to balance the interests affected by disclosure. [FN17] The Senate Report indicates the nature of that balance as one of "the public's right to know with the private citizen's right to be secure in his personal affairs *which have no bearing or effect on the general public.*" [FN18] The maintenance of secret law would weigh heavily against the public interest.[FN19]

> FN15. *See* S.Rep. *supra* note 6, at 7; H.Rep., *supra* note 6, at 8; Grumman Aircraft Engineering Corp. v. Renegotiation Board, 138 U.S.App.D.C. 147, 425 F.2d 578 (1970).

> FN16. *See generally,* Davis, *supra* note 7, at § 3A.19.

> FN17. *See* S.Rep., *supra* note 6, at 7; H.Rep., *supra* note 6, at 8.

> FN18. S.Rep., *supra* note 6, at 7.

> FN19. In construing the identical phrase in exemption 6, this Court recently held that "[t]he statutory language 'clearly unwarranted' instructs the court to tilt the balance in favor of disclosure." Getman v. NLRB, 146 U.S.App.D.C. ___, at ___, 450 F.2d 670, at 674 (1971).

III.

In the proceedings below, the District Court reviewed the documents *in camera.* While we have recommended this procedure in Freedom of Information Act cases, Soucie v. David, ___ U.S.App.D.C. ___, 448 F.2d 1067 (1971), I am troubled by the fact that this short circuits the adversary process. The party seeking disclosure lacks the knowledge of the actual contents of the documents necessary to question the affidavits of the agency. ***716 **255** Still, we are unable to discern any solutions which would not require disclosure of *all* agency documents. Perhaps the parties in this and future cases may be able to propose some acceptable solutions of the problem. Until then litigants will have to rely on the trial court's careful examination and appellate review. [FN20]

> FN20. When the decision of the trial court is based on written or uncontraverted oral evidence alone, there is no particular reason to be bound by the trial court's findings of fact and the clearly erroneous rule does not apply. *See generally* 5 J. Moore, Federal Practice ¶ 52.04 (1969) and cases there cited.

C.A.D.C., 1971.
Sterling Drug, Inc. v. F.T.C.
450 F.2d 698, 146 U.S.App.D.C. 237, 1971 Trade Cases P 73,706

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50 of 51 DOCUMENTS

[*Summary]

Annual Report to Stockholders

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TABLE OF CONTENTS FOR ANNUAL REPORTS

[*1]

EASTMAN KODAK COMPANY

ANNUAL REPORT 1989

CHAMPIONS OF CUSTOMER SUCCESS

EASTMAN KODAK COMPANY AND SUBSIDIARY COMPANIES

SUMMARY OF THE YEAR IN FIGURES
(Dollar amounts and shares in millions,
except per share figures)

	1989	1988 (**)	Change
Sales	$18,398	$17,034	+8%
Earnings from operations	1,591 (*)	2,812 (***)	-43%
Net earnings	529 (*)	1,397	-62%
- percent of sales	2.9%	8.2%	
- per common share	$1.63	$4.31	
Cash dividends declared	$649	$616	
- per common share	$2.00	$1.90	
Average number of common shares outstanding	324.3	324.2	
Shareowners at close of year	171,954	174,110	
Total net assets (shareowners' equity)	$6,642	$6,780	-2%
Additions to properties	$2,118	$1,914	+11%
Depreciation	$1,181	$1,057	+12%
Wages, salaries, and employee benefits	$5,877	$5,469	+7%
Employees at the close of year			
- in the United States	82,850	87,900	-6%
- worldwide	137,750	145,300	-5%

(*) After deduction of $875 million of restructuring costs ($549 million after-tax).

(**) Sales, earnings, assets, and employment data include Sterling Drug Inc. since the date of acquisition (February 23, 1988).

(***) Restated to reflect Goodwill amortization in Cost of Goods Sold.

Note: The following index is part of the original document. Page numbers have been kept for your convenience in locating data referred to within text and are identified as [HARDCOPY PAGE #] in the upper left-hand corner of each page. To access these pages, refer to SEC Online's Table of Contents

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[*2] [HARDCOPY PAGE 1]

MANAGEMENT COMMENTS

Coming after two consecutive years of record operating results, 1989 was a disappointing year in financial terms. It also was a year of reassessment and resolve in which we re-positioned the company to best meet the needs of Kodak customers, to operate more efficiently and to improve future financial performance.

[PHOTO OMITTED: "As the company bridges to the future-serving customers in the Imaging, Chemicals, Health and Information sectors-its strength is derived from excellence in material science. Using carefully honed skills, Kodak imaging scientists (above) play a critical role in creating the building blocks which make customer success possible, in traditional and emerging imaging technologies."]

Sales, Earnings and Dividends

Worldwide sales continued to advance, increasing 8 percent to a record $18.4 billion. Earnings, however, came under severe pressure from an unusually long list of negative influences. General inflation, unfavorable currency exchange rates, a weaker U.S. office equipment market, and new product delays in the company's Information sector combined to depress results. Restructuring costs-including provision for special separation payments and write-offs of inventories, capital and other assets-were substantial. Aggressive competition made it extremely difficult to fully offset these negative factors with higher prices. Net earnings also were affected adversely by higher interest expense.

Earnings from operations declined 43 percent to $1.59 billion, while net earnings dropped 62 percent to $529 million. On a per-share basis, net earnings totaled $1.63, compared with $4.31 in 1988, $3.52 in 1987 and $1.10 in 1986.

Without restructuring charges of $875 million, earnings from operations would have been $2.47 billion, down 12 percent. Without the effect of restructuring costs, net earnings would have been $1.08 billion or $3.32 per share, 23 percent lower than 1988.

Cash dividends declared during the year totaled $649 million and amounted to $2.00 per share, an increase of 5 percent.

Quality: A Way of Life

Good volume gains were recorded throughout 1989, demonstrating Kodak's basic strengths and opportunities for growth. These gains speak well for the unique relationship between the company and its customers. We know that when our customers succeed, we succeed. Through unrelenting attention to quality, we strive to be champions of customer success and we note with pride that millions of customers view us in that light.

In an independent study conducted by New Jersey-based Total Research Corp., surveying 91 branded products, U.S. consumers ranked Kodak film Number One in product quality. This is a tribute to the men and women who develop, manufacture, market and distribute Kodak film.

Providing customers with the quality products they need to succeed is nothing new for Eastman Kodak Company. Customer satisfaction has been a company touchstone since George Eastman introduced the first box camera more than 100 years ago, with the slogan: "You press the button, we do the rest." This legacy continues throughout each of our businesses today.

Eastman Chemical Company's ability to meet specific customer challenges through quality partnerships is nearly legendary. More broadly, customer satisfaction is a key reason Kodak enjoys market leadership positions in virtually every field of business in which it operates from radio-graphic film to business imaging to professional photography. Both Sterling Drug Inc. and its Lehn & Fink division also have a number of market leaders, including Bayer aspirin and Lysol disinfectant. And for nine years running, users of high-volume copier-duplicators have rated Kodak equipment the very best in annual surveys conducted by Datapro magazine.

Striving To Be the Best

Being the very best in today's highly competitive world requires continuous improvement. In 1989, the company realigned its businesses to sharpen and intensify efforts in four strategic sectors-Imaging, Chemicals, Health and Information-and to improve financial performance throughout the 1990s.

Related to this four-sector vision is the company's declaration that it intends to be the

[*3] [HARDCOPY PAGE 2]

During 1989, it was announced that Chairman and Chief Executive Officer Colby H. Chandler would retire in June, 1990, after 40 years of Kodak service. Kay R. Whitmore, president of the company since 1983, has been designated Mr. Chandler's successor by the Board of Directors.

world's best in chemical and electronic imaging. Excellence has long been the Kodak standard in conventional chemical, or silver halide, photography. Significant advances continue with breakthrough products such as Ektar 25 color negative film, which possesses the world's best image structure. This commitment to conventional imaging is underscored

by the company's ongoing investment in state-of-the-art film manufacturing.

At the same time, we are exploring and defining the best ways to manage the convergence of conventional imaging science with electronics. While it has yet to make a significant impact in consumer markets, electronic still-photography is increasingly important in highly specialized government, commercial and industrial uses.

To better serve those rising markets and others as they emerge, we have established four new Centers of Excellence within the Information sector. These Centers are developing electronic image acquisition, storage systems, software, and printer products. Positioning these technologies for the first time in one location streamlines our innovation process, enhances the quality of our output, and significantly reduces development costs. As a result, the strategic drive to extend our color imaging heritage to electronic and hybrid products is greatly enhanced.

Already more than 50 Kodak products involve electronic image capture or conversion. Among them are Business Imaging Systems' Imagelink scanner 9000, Printer Products' XL 7700 digital continuous tone printer, Copy Products' Ektaprint 1392 printer, Professional Photography's Premier image enhancement system and Motion Picture and Television's HDTV telecine projection system.

[PHOTO OMITTED: "Chandler (right) and Whitmore (left) are pictured here with new Eastman EXR color negative film for motion pictures and an experimental CCD high definition television telecine projection system. This exciting technology maximizes the role of film as an origination source for HDTV productions."]

Reducing the Cost Base

While these organizational moves allow us to operate more effectively, we know the company must do more than restructure for the long term. Today's increasingly competitive environment calls for immediate action. At mid-year, we set in motion a plan to substantially improve operating cash flow.

Since then, we have worked aggressively to sell or restructure value-consuming assets. BioImage Corporation, Sayett Technology, Kodak Video Programs, and Aquidneck Data Corporation have been sold. Minilab sales and service also were divested.

A joint venture incorporating Kodak's Bio-Products Division was formed between Kodak and Cultor Ltd. of Finland, creating an independent company with world-class promise in emerging bio-technology markets.

Many corporate information services were outsourced, allowing us to refocus Kodak resources on operations which create value for the company. IBM is now operating Kodak's data centers. Businessland is providing personal computer services. And Digital Equipment Corporation will manage Kodak's telecommunications services.

Within the company's business groups, our concentration on value-adding activity resulted in workforce reductions in many units. Worldwide

employment declined by more than 7,500 in 1989. Of the 5,000 U.S. employees who left the company, more than 90 percent did so voluntarily through a special separation program. Downsizing of Sterling's international operations also significantly reduced the workforce of Kodak and its subsidiaries. Year-end worldwide employment of 137,800 was 5 percent below 1988's close, notwithstanding the addition of 2,300 people associated

[*4] [HARDCOPY PAGE 3]

with a French photofinisher we have acquired.

We also have moved to relate pay more closely to financial performance. First, as a result of a difficult 1989, we will hold the line on wage and salary pay scales for most U.S. employees. Second, we will place more of management's compensation at risk, with as much as 40 percent of annual compensation dependent on corporate performance. No middle manager will have less than 15 percent of annual compensation linked to company results. And third, a new wage dividend plan will yield payments more closely linked to the company's annual financial performance. Previously, the wage dividend was based on cash dividends declared for shareowners. This tended to reflect long-term earnings performance, but not the more immediate results. Our new wage dividend formula will be based primarily on the company's return on assets.

Investing in the Future

While our efforts to cut costs continue, we will not fail to make reasonable investments strategic to our future for the sake of short-term performance. Kodak's very foundation begins with innovation, technology and material science. That, of course, leads to our ability to provide quality products, improved efficiency and acclaimed service to our customers. In 1989, we invested $2.118 billion in capital improvements.

Our focus on the future includes additional film-base-making capacity for 35 mm film, a state-of-the-art film sensitizing plant to support professional photography, and a new research center for Sterling to bolster efforts in the discovery and introduction of ethical drugs.

During the year, $1.25 billion also was spent on research and development. Taken together with our capital investment, this represents a commitment to our four sector strategy and an understanding in commercial terms that we must employ the best of modern technology to meet changing customer needs.

Strengthening Our Global Reach

Moving the headquarters of our international operations from Rochester, N.Y. to London signifies the global nature of our business. This, along with an enhanced presence in Japan, emphasizes the fact that Europe and Asia play ever stronger roles in our future success.

Construction of a European Graphics Technology Center in Harrow, England and improvements in our European distribution system through consolidation of these operations in England, France, Germany, and Italy

further point to our enhanced opportunities in Europe. As East meets West, Kodak products are finding even greater acceptance in the new prosperity of the European Community.

We know that when our customers succeed, we succeed.

The Outlook

Much has been accomplished in the past year. Many of the major discontinuities which marked 1989 are behind us and we face the future with an improved business portfolio, a better overall cost position and a process for better asset management.

Concerning 1990, we look forward to higher sales, better earnings from operations, and improved cash flows, especially in later quarters when benefits of initiatives put into place last year are more fully realized. Uncertainties in the U.S. economy, the down cycle in the chemical industry, and a softening in the domestic market for office equipment could restrain somewhat the gains which otherwise would be achieved.

In the Imaging and Health sectors our prospects are encouraging. The Information Systems sector should show recovery from 1989's depressed level. In Chemicals, we are confident that no one will manage their business any better than our Eastman associates.

For the longer term, our four-sector vision is clear, as is our commitment to be the very best in each. Our strategic intentions are well defined. And we are dedicated to managing in a way that creates additional value for customers, employees, shareowners and others who have a stake in the results we produce.

Colby H. Chandler
Chairman and Chief Executive Officer

Kay R. Whitmore
President and Executive Officer

[*5] [HARDCOPY PAGE 4]

Kodak Business Sectors Share Vital Links

Chemicals

Imaging

Health

Information

Spheres of Success

Kodak's involvement in four sectors - Imaging, Chemicals, Health and Information - is as natural as 19th century physicist James Clerk Maxwell's discovery of additive color.

Passing light through red, blue and green filters, Maxwell found that the combination of light produced white at the center and secondary colors of magenta, cyan and yellow. This understanding proved to be the key to modern-day color photography.

At Kodak's center is Imaging, Health ls, Health and Information form natural growth lines. From the very start, the manufacture of film, as well as its processing, required chemicals.

Kodak's entry into Health and Information markets started with film products; in Health there were x-ray films and in Information there were graphics films and microfilms.

Extensive knowledge of controlled chemical reactions in the photographic process led to Kodak's development of dry chemistry slides for clinical testing. And for more than 70 years Kodak has supplied chemical intermediates to the pharmaceutical industry.

Depth in Imaging science has further led the company to more electronically-linked developments in copiers and optical storage.

As you can see, Kodak today, like photography itself, is the result of a natural additive process-each business interrelated and strengthened by the other.

What supports our four sectors is not simply their bond but the strengths of three critical elements: people, technology and marketing.

People-

Employee pride is a strong taproot of Kodak success. It nourishes policies and traditions of dealing fairly with each other and the ability to see the future with optimism. No company embarks on the adventure of the 1990s with more depth and skill, nor with more reason to believe in its own vision. All four sectors abound with qualified personnel, well equipped and prepared for the demands ahead.

Technology/Manufacturing-

Scientists and support teams in research and development create unique opportunities, linking long-standing Kodak strengths in chemistry and optics with new directions in electronics and magnetics, as well as hybrid technologies. Kodak engineers and technicians have literally pushed themselves to new levels of process technology, promoting an atmosphere of continuous improvement that enhances manufacturing performance.

Marketing-

Quality is the cornerstone of the company's marketing efforts. Products of quality and value, presented with integrity in 150 countries, give all Kodak business groups a clear identity. The common drive is to know customer wants, then to respond in creative ways to help customers succeed.

[*6] [HARDCOPY PAGES 5-6]

[HARDCOPY PAGE 5]

Imaging

Photographic Products Group

Consumer Imaging Division
Consumer Services Division
Motion Picture and
Television Products Division
Professional Photography Division

Products

Consumer Imaging Division

Ektar negative films
Ektachrome and Kodachrome films
Kodacolor Gold color negative films
Kodak black & white/color photographic papers
Ektacolor 2001 color paper
Ektacolor Royal color paper
Ektacolor RA chemicals
Flexicolor chemicals
Colorwatch system
Create-A-Print 35 mm enlargement center
Class 35 color printer
Ektralite 110 camera
Fling 35 cameras
Mickey-Matic camera by Kodak
S Series 35 mm cameras
Stretch 35 camera
Weekend 35 camera
Carousel projectors
Supralife (R)/Photolife (TM) alkaline batteries

Motion Picture and Television Products Division

Eastman black & white negative and reversal films
Eastman color negative and print films
Eastman EXR color and negative films
Eastman motion picture processing chemicals

Professional Photography Division

Kodak developers/stop baths/fixers
Ektachrome and Kodachrome professional films
Ektapress Gold films
T-Max black & white professional films
Vericolor professional films
Kodak black & white/color photographic papers
Accudata lab control systems
Prism electronic previewing system

Chemicals

Eastman Chemical Company

Chemicals
Plastics
Fibers

Chemicals

Acetyl chemicals
C-A-P & C-A-T enteric coating polymers
Chemical additives
Diketene derivative chemicals
Eastman solvents and glycols
Eastotac resins
Ektapro and Ektasolve solvents
Epolene waxes
Kodaflex plasticizers
cellulose esters and inhibitors
Myvatex emulsifiers
Myverol distilled monoglycerides
Oxo aldehydes and alcohols
Texanol ester alcohol
Tenox antioxidants

Plastics

Eastobond hot-melt adhesives and amorphous polyolefin products
Kodacel film and sheet
Kodapak PET polyester
Tenite cellulosics, polyethylene, and polypropylene

Fibers

Estrobond plasticizers
Estron acetate yarn and tow
Kodel polyester

Health

Sterling Drug Inc.
Health Sciences Division
Clinical Products Division
Lehn & Fink Products

Sterling Drug Inc.

Bayer aspirin
BioBrane wound dressing
Bronkaid bronchodilators
Campho-Phenique antiseptics
Carpuject individual-dose cartridges
Danocrine (danazol)
Inocor (amrinone)
Midol analgesics
Neo-Synephrine decongestants
Omnipaque contrast media
Panadol acetaminophen

Phillips' milk of magnesia
pHisoHex cleanser
Stridex skin care

Health Sciences

Ektascan laser imaging films, printer and accessories
Kodak films for video imaging
Industrex papers and chemicals
Kodak industrial x-ray films
Kodak multiloaders (roomlight film handling)
Kodak medical and dental x-ray films, screens, cassettes, chemicals and processors

Clinical Products Division

Ektachem clinical chemistry blood analyzers (36 assays available)
SureCell rapid test kits
DT (desktop analyzers)

Lehn & Fink Products

Chubs/Wet Ones wipes
d-CON rodenticides
Diaperene baby care products
Formby refinishing products
Glass Mates glass cleaner
Love My Carpet rug and room deodorizer
Lysol disinfectants and cleaners
Minwax wood care products
Mop & Glo floor care
Ogilvie hair care
Red Devil enamels and finishes
Resolve carpet cleaner
Thompson's sealers and stains

Information Systems

Commercial Systems Group

Copy Products Division
Customer Equipment Service Division
Graphics Imaging Systems Division
Kodak Apparatus Division

Imaging Information Systems Group

Business Imaging Systems Division
Federal Systems Division
Image Acquisition Products Division
Integration and Systems Products Division
Mass Memory Division
Printer Products Division

Copy Products Division

ColorEdge copier-duplicators

Ektaprint copier-duplicators
Ektaprint 1392 printers
IBM series of copiers (50-70-85)

Graphics Imaging Systems Division

AccuMax films
Aqua-Image plates
Designmaster electronic stripping station
Kodak Signature color proofing system
Ultraline film
Ultratec rapid processing camera products
Versalite contact and duplicating products

Business Imaging Systems Division

Kodak KAR information systems
Kodak KIMS information systems
Imagelink (TM) component series and camera films
Kodak IMT microimage terminals
Optistar computer output systems and films
Reliant microfilmers
Starmate reader-printer
Startech reader-printers

Federal Systems Division

custom photographic printers and processors
electronic imaging systems
high performance optical systems
Kodak image editing workstations

Image Acquisition Products Division

Kodak industrial imaging systems
Kodak sensors and scanners
Megaplus cameras

Integration and Systems Products Division

Analyst/Designer cradle
Analyst/Designer tool kit
Architech series of products
Atex newspaper and magazine publishing software products
UNIX system-based family of products

Mass Memory Division

Ektapro 1000 motion analyzer
Kodak model 560 automated disk library
Kodak optical disk system 6800
Kodak TFX diskettes
Kodak and Verbatim color diskettes
Verbatim Datalife and DatalifePlus diskettes
Verbatim 5 1/4" magneto-optical disks

Printer Products Division

Kodak Diconix 150 Plus printer
Ektatherm media
SV6500 color video printer
XL 7700 digital continuous tone printer

[HARDCOPY PAGE 6]

[PHOTO OMITTED: "Reaching new customer horizons, Kodak Ektar color negative films provide photo enthusiasts with the world's finest-grain prints. Ektar 125 film used to capture the beauty of this coastal vista, is the newest film in the Ektar family"]

[*7] [HARDCOPY PAGE 7]

Imaging

The Imaging sector achieved record sales in 1989. Earnings declined due to restructuring costs, unfavorable exchange rates and the mix of sales, with lower profit margin products recording larger gains.

In its 150th year, the popularity of photography continued to grow.

During the last decade the number of amateur color negative exposures annually has more than doubled, increasing to more than 50 billion worldwide in 1989. Related to this is the increased number of cameras in use worldwide, which totaled 354 million by year's end. The potential for market growth is made clear by the fact that three of every four households in the world still do not have a camera in use.

In most of the world's imaging markets, Kodak is the leading photographic brand. This includes the U.S. and every major market in Europe.

Whether taking family snapshots or making feature-length motion pictures, people are using more film with better equipment than ever before. To meet this growing demand, the company is expanding its film-base manufacturing operations in Rochester. When completed in late 1991, film-base manufacturing capacity will increase by seven percent. In addition, a new sensitizing plant will become operational in late 1990.

Both facilities employ tight environmental controls. The new film-base manufacturing operation, for instance, will recycle more than 99 percent of the solvents it uses. Kodak's commitment to sound environmental stewardship is further demonstrated by a plan to replace and upgrade chemical storage tanks at Rochester's Kodak Park. The company also has embarked on an acclaimed project with photofinishers to recycle plastic film containers, a program to be extended to all single-use cameras.

To better serve customers worldwide and strengthen the long-term performance of the company's core business, three divisions - Consumer Products, Photofinishing Systems and U.S. Sales - were consolidated into a new unit: the Consumer Imaging Division (CID) which treats consumer photography as a single business and houses strategic planning, research and development, manufacturing, marketing, distribution and sales for

this business in one organization. The results are reduced costs, leaner management and streamlined product delivery to customers.

Performance Overview	1989	1988	Change
Sales (in millions)	$6,998	$6,642	+5%
Earnings from Operations	821 (*)	1,280	-36%

(*) After restructuring costs of $388 million.

Consolidation of Kodak's battery business into the new Consumer Imaging Division provides marketing efficiencies by extending Kodak's brand presence in battery markets.

As part of the company's ongoing effort to focus on key businesses, Kodak sold Sayett Technology, the manufacturer and marketer of Datashow liquid crystal display equipment, to a private investor at the end of 1989.

Responsibility for Kodak's presentation products, led by Ektagraphic slide projectors, also has been shifted from the Motion Picture and Television Products Division to the Professional Photography Division.

In yet another move to improve the company's outlook for future growth, Kodak has articulated its intent to be the world's best in traditional silver halide and electronic imaging. To better develop electronic imaging technologies, the Electronic Photography Division has been transferred to Kodak's Information sector, where markets for practicable electronic imaging products will develop first.

The year also marked significant marketing breakthroughs. Kodak and The Walt Disney Company signed an unprecedented 15-year, multimillion-dollar contract making Kodak the official supplier of film, batteries, cameras and other allied photographic products for Disney. It further makes Kodak the exclusive photographic consultant to all Disney theme parks in the U.S. and the new Euro Disneyland scheduled to open in 1992 near Paris. A similar agreement exists with theme parks run by Universal Studios.

Kodak will be an official sponsor of the 1992 Olympic Summer Games in Barcelona, Spain and the 1992 Olympic Winter Games in Albertville, France, as well as an "Official Sponsor of the 1992 U.S. Olympic Team."

[PHOTO OMITTED: "Improved 400- and new 1600-speed films were added to the world's most popular film line, Kodacolor Gold films."]

[*8] [HARDCOPY PAGE 8]

Consumer Imaging

Consumer Imaging's moderate sales advance in 1989 was based principally on worldwide volume growth of 35 mm color negative films. Impressive gains were made by Kodak 35 mm non-SLR compact cameras as well.

Kodacolor Gold film, a worldwide flagship brand, added improved 400-speed and new 1600-speed films to its consumer line of color

negative films. Kodacolor Gold 1600 film lets photographers expose color photographs practically anywhere there is enough light to see. It also offers the richest, most accurate colors for low-light and fast-action photography. Kodacolor Gold 400 film provides excellent color saturation and accuracy.

Demand for Kodak Ektar color negative film continues to build. Its technical superiority has generated universal excitement among photo enthusiasts. Photo critics worldwide hail Ektar 25 film as the sharpest, finest-grain color film ever made.

Ektar 125 film, introduced in 1989, extends the benefits of the image quality breakthroughs found in Ektar 25 to a more popular speed. Unlike Ektar 25 film, it can be used in popular "point and shoot" non-SLR (single lens reflex) cameras - many of which will not properly expose films with speeds below ISO 100. If Ektar 25 film were not on the market, Ektar 125 film would provide the world's best image structure in color negative film.

After a 17-year hiatus from marketing 35 mm cameras, Kodak has become the leading marketer in the U.S. of non-SLR 35s in just three years. Three new cameras were added to Kodak's popular S-Series 35 mm camera line, including the new top-of-the-line Kodak S1100XL. Employing a new infrared auto focus system, the S1100XL enables users to take focused shots without complicated focusing procedures. It also takes focused pictures as close-up as two feet and can use the film with the world's best imaging structure, Ektar 25 film.

Two other 35 mm non-SLR cameras also were introduced, the rugged Kodak Explorer - resistant to dirt, sand and water - and the eye-catching all-white Kodak Breeze, combining 35 mm picture-taking with many proven, decision-free features.

The Kodak Stretch 35 "camera with film," or single-use camera, was one of the year's most exciting and innovative new products. Designed for daylight picture-taking of wide-angle scenes, this camera produces dramatic 3 1/2 x 10-inch prints, previously obtainable only with expensive panoramic equipment. A water-resistant, single-use camera, the Kodak Weekend 35 camera, was also introduced.

As demand increases for color negative film, so too does the demand for color photographic papers and processing chemicals. Each registered good volume gains for the company in 1989, performing well among large wholesale photofinishing labs and retail minilab outlets.

Sales of Kodak paper and chemicals are bolstered by two highly successful quality assurance programs, the Kodak Colorwatch system in the U.S. and Canada, and the Kodak Express program in Europe, Latin America and Australia. Each program allows photofinishers, large and small, to participate in a quality monitoring program and to share in the value of the Kodak brand.

Successful introduction of rapid access Kodak Ektacolor 2001 paper and the RA-4 process have further enhanced Kodak's image among photofinishing customers. Early in 1990, Kodak introduced Kodak Ektacolor Royal paper for minilabs. Its added thickness and high gloss offer a premium look and touch that make it Kodak's most valued paper in

the consumer arena.

Significant improvements continue to be made in the cost-and-asset management of papers and chemicals. Direct shipments of Ektacolor paper from the manufacturing plant to major European finishers, for one, have resulted in improved service to customers and lower inventory costs.

Substantial sales gains by Kodak batteries were led by its alkaline series, with impressive growth coming from key international markets.

[PHOTOS OMITTED: "Bill Cosby, one of America's top quality performers, tells photofinishing customers how to get top quality prints, helping make the Kodak Colorwatch system the company's most successful quality assurance program."; "Serving up panoramic prints like this one of the Matterhorn in the Swiss Alps, the new single use Kodak Stretch 35 camera has become a popular item for world travelers. This is the actual print size, 3 1/2 x 10 inches."]

[*9] [HARDCOPY PAGE 9]

[PHOTOS OMITTED: "Eight percent of all consumer photographs in the U.S. are taken at amusement parks. A new 15-year contract makes Kodak the official photographic consultant and supplier of photographic film and equipment to Disney theme parks in the U.S. and Europe."]

The Kodak Photolife battery line now includes specialty batteries, as well as standard cell sizes. These new cells are engineered for high performance in cameras, flashes and slide viewers.

Production of 9-volt and AA alkaline batteries has begun in Columbus, Georgia at a new manufacturing plant, jointly owned with Matsushita Battery Industrial Company, Ltd. Expansion for C and D size batteries and additional capacity for AA batteries continues and should be operational by year-end 1990.

[*10] [HARDCOPY PAGE 10]

Consumer Services

All of Consumer Services' photofinishing sales today are outside the U.S. with the major contributors in Europe and Japan. Excellent volume gains were registered throughout 1989. Kodak also shares in the earnings of Qualex Inc., a U.S. photofinishing joint venture with Fuqua Industries, Inc.

Kodak's international photofinishing operations and its interest in Qualex provide the company with a unique opportunity to better understand customer needs and to effectively launch new photographic innovations. The introduction of the new Stretch 35 camera was a success due partly to the ability of these labs to put the photofinishing machinery in place to support it.

[PHOTO OMITTED: "Kodak's presence continues to grow in the highly competitive Japanese market."]

To bolster Europe's introduction of Ektar color negative films, the Consumer Services Division established a special Pan-European Ektar Print Program. This effort provides photo enthusiasts with top-quality photofinishing to go along with the world's finest-grain film. A similar program exists in Japan, highlighting Ektar 25 film's ability to provide sharper photographic enlargements.

Motion Picture and Television

It was a year of records and milestones for Kodak's motion picture business, as sales of 35 mm Eastman color negative film achieved new highs in the 100th year of continuous service to the entertainment film industry.

The Academy of Motion Picture Arts and Sciences commemorated movie-making's centennial by presenting a special Oscar to the company. Over the years, Kodak has received six other Oscars for technical achievement in its motion picture films.

[*11] [HARDCOPY PAGES 11-12]

[HARDCOPY PAGE 11]

Breakthroughs continued in 1989 with the introduction of Eastman EXR films. These "extended range" color negative motion picture films provide cinematographers with more under-exposure latitude and improved sharpness and grain characteristics.

Keykode number system, which was introduced on EXR film, helps bridge the gap between traditional film production and modern post-production techniques. With machine-readable bar codes and human-readable numbers, Keykode helps save editing time and provides valuable information for editors and editing machines during post-production.

Kodak also demonstrated two new breakthrough technologies linking motion picture film to the emerging world of high definition television (HDTV). Kodak's CCD HDTV telecine provides the means by which images recorded on motion picture film can be transferred to any of the proposed HDTV standards. Kodak's proposed system provides an economical way to utilize digital image manipulation as a tool for creating visual effects in motion pictures.

In its 150th year, the popularity of photography continued to grow.

Professional Photography

Product introductions, designed specifically to meet the demanding needs of professional photographers, continued to fuel good sales volume growth for the Professional Photography Division. The dollar's strength against the yen and European currencies, unfortunately, offset much of the beneficial effect of volume gains.

Kodak Ektachrome 100 Plus professional film, which provides excellent color saturation while maintaining the brightest whites, continues to achieve strong sales growth worldwide. Kodachrome 64 professional film, the color film of choice for top professionals, has shown exceptionally

strong growth in Japan. Ektachrome 800-and 1600-speed films demonstrated impressive volume gains in Europe.

Kodak Ektapress Gold 100, 400 and 1600 professional films, made available in early 1989, are the first color negative films created solely with photojournalists in mind. Sales volumes indicate that photojournalists appreciate the special attention.

Sales of the Kodak T-Max black-and-white films, introduced in 1987, have continued to grow considerably. This is especially true in Europe, Asia and Latin America. Prints made from these films are now further enhanced by Kodak Polycontrast III RC paper, which was introduced to strong acceptance during the year.

Kodak Ektar 25 professional film also was introduced in 1989. As of early 1990, it became available in the 120 format, which is recommended when large-scale enlargements are to be made.

New Kodak pro system rapid access color papers and display products greatly enhance lab productivity. They also have been environmentally engineered for cleaner processing, and provide customers with the brilliant colors they have come to expect from Kodak.

The new Kodak Premier image enhancement system allows the electronic manipulation of silver halide images, and puts the Professional Photography Division in the forefront of hybrid imaging technology. Systems like this one, which combine the image quality of traditional photography with the flexibility of electronic technology, should yield substantial returns to the company in the years ahead.

[PHOTO OMITTED: "As East met West, color photojournalism blossomed. And increasingly color negative photos, like this one taken New Year's Eve at the Berlin Wall, are being captured on Kodak Ektapress Gold professional films."]

[HARDCOPY PAGE 12]

[PHOTO OMITTED: "Through intensive research ten years ago, Eastman developed PET bottle polymer. Throughout the 1980's it has been Eastman's fastest growing business."]

[*12] [HARDCOPY PAGE 13]

Chemicals

Eastman Chemical Company (ECC) had its best year ever in 1989, posting record sales and earnings for the third consecutive year Success is a direct result of ECC's high capacity utilization, quality products, excellent customer support and employee commitment to the continuous improvement of manufacturing and management processes.

Significant cost savings continue to be achieved, as well. Production of chemicals in the coal gasification facility at Kingsport, Tennessee, has been particularly cost-effective and efficient. The The largest of its kind in the world, this facility manufactures acetic anhydride from coal more economically than it can be manufactured from petroleum-based

feedstocks.

ECC is doubling the capacity of this facility to further improve its low cost position. Upon completion in late 1991, the facility will be capable of producing nearly 1.2 billion pounds a year of acetic anhydride.

ECC's highly regarded Technical Service unit is part of the marketing organization, and its people spend more than a quarter of their time at customer sites. Its is in the field that perceptions of customer needs are confirmed and fulfilled as new products and services develop.

Teams of research, manufacturing, marketing and distribution people from ECC have developed "Quality Partnerships" with major customers and suppliers. Among other things, these "partnerships" troubleshoot special special concerns, develop systems and products jointly, and, in general, search for ways to optimize the resources of both Eastman and the customer.

ECC s continues to extend its global reach. Sales outside the U.S. grew substantially in 1989, exceeding $1 billion for the first time. Today more than 30 percent of Eastman's trade business is outside the U.S., with the greatest growth coming in Europe and Asia.

To improve worldwide customer satisfaction, ECC launched major new emphasis, "Make International Business Easy." Customer satisfaction surveys are conducted in nine different languages, reaching a great majority of ECC's worldwide customer base. The program charts customer attitudes on a variety of issues, including product quality, customer service, pricing practices, and reliability of deliveries.

ECC further strengthened its role in the global polyester packaging business with the October opening of another manufacturing plant in Toronto, Canada.

Performance Overview	1989	1988	Change
Sales (in millions)	$3,522	$3,123	+13%
Earnings from Operations	643 (*)	630	+2%

(*) After restructuring costs of $17 million.

Chemicals

ECC's chemicals business achieved record sales in 1989. While sales of bulk industrial chemicals ensure high capacity utilization, its chemicals business is primarily focused on highly technical products requiring state-of-the-art capabilities and special attention to customers.

To serve customers both large and small, as well as operate more efficiently, the company formed Eastman Fine Chemicals by merging the Kodak Laboratory & Research Products Division, the external chemical sales of Sterling Organics, and selected portions of ECC's specially organic chemicals. With more than half a century of experience, this new business unit serves the pharmaceutical, photochemical, dye, agricultural chemical, custom chemical, and laboratory chemical and

biological markets.

[PHOTO OMITTED: "To better identify for recycling, more and more PET plastic containers are coded with a special mark-a triangle with the number one and the letters "PETE." More than 20 percent of PET soft drink containers in the U.S. are currently recycled."]

Eastman Fine Chemicals provides its customers with a wide range of technical capabilities, and provides Kodak with an integrated research, manufacturing and marketing effort throughout the U.S. and Europe.

Resin intermediates for coatings continue to account for a substantial portion of chemical sales. New 1,4-CHDA dibasic acid monomer was added to Eastman's list of high-performance coatings intermediates. 1,4-CHDA monomer, used in coil coating products, gel coats and powder coatings, contributes both stain and weather resistance to finished products.

In response to environmental concerns of the coatings industry, ECC has introduced acetoacetylation chemistry with two new products, AAEM (acetoacetoxyethly methacrylate) and TBAA (tertiary butyl acetoacetate). Their use helps coatings chemists meet the toughest standards required of volatile organic compounds.

To assist Eastman personnel and customers

[*13] [HARDCOPY PAGE 14]

with answering product selection questions on Eastman CPO (chlorinated polyolefin) products for coatings an inks, the Technical Services' Coatings Lab developed "The CPO Assistant," a knowledge-based computer software system.

Epolene waxes are used in floor polishes, printing inks, textiles, adhesives, plastic additives, paper coatings, and wax blends. In order to provide the manufacturing flexibility to produce a wider range of products, a new direct synthesis process for manufacturing Epolene low molecular weight polyethylene waxes was implemented at Texas Eastman in Longview.

To meet customer demand for photographic and technical grade hydroquinone, ECC completed a 25 million pound manufacturing facility at Tennessee Eastman in Kingsport, as well as a facility at Arkansas Eastman in Batesville, to manufacture diisopropylbenzene-a key intermediate. Both plants are now operating at full capacity.

Customer satisfaction surveys are conducted worldwide in nine different languages.

Plastics

Plastics registered strong revenue gains in 1989 led by sharp increases in the sale of polyester plastics.

[PHOTO OMITTED: "Eastman's proprietary Texanol ester alcohol is a key ingredient in latex house paint."]

Throughout most of the 1980s polyester plastics used in food and beverage packaging experienced a

[*14] [HARDCOPY PAGE 15]

substantial increase in demand and the industry responded by expanding its production capacity. By 1989, worldwide capacity exceeded product demand. The resulting excess capacity coupled with strong competition from substitute products, forced prices down in 1989. At the same time, costs of key raw materials such as paraxylene and ethylene glycol rose sharply. As a result, profits from the sale of polyester plastics were under intense pressure throughout the year.

Having developed a number of new applications and specialty products, Eastman should be well positioned as supply and demand readjust. ECC's technical service, research and development, and marketing skills are viewed as strengths throughout the industry.

One of PET (polyethylene terephthalate) polymer's clear advantages is its recyclability. More than 20 percent of all PET soft drink containers in the U.S. are currently recycled. This number is expected to climb steadily through 1992. In part, this is due to the efforts of ECC and a group it helped organize, the National Association for Plastic Container Recovery. Nearly all PET containers by 1992 will be coded with a special mark-three arrows forming a triangle around the number one with the letters "PETE" below-to make it easier for consumers and solid waste managers to identify PET for recycling.

Recycled PET polymers are used in the manufacture of many other materials, such as carpet fiber, scouring pads, fiberfill and engineering resins. Eastman, through its methanolysis process, transforms used PET polymer into its raw materials. These raw materials are then used elsewhere to manufacture other products, such as Kodak x-ray films.

Eastman specialty plastics continue to find excellent acceptance in the marketplace. Copolyesters such as those found in Kodak Thermx products, used in microwaveable trays, and Ecdel products, used in IV bags, are providing customer solutions attuned to the way in which we live.

Sales of performance plastics doubled in 1989. These strong, weather-resistant, lightweight plastic materials are increasingly replacing steel and other metals in tractors, electrical connectors, machinery and other applications where a high-performance plastic is desired.

Sales of polyolefin plastics were level in 1989 as volume increases were offset by lower prices.

Just as a new 220-million-pound-per-year gasphase polypropylene plant was coming on-stream in May, Texas Eastman announced that it was building yet another polypropylene plant of the same size to be completed in 1991. These plants better position ECC to serve the expanding needs of customers in automotive parts, packaging, and medical markets.

A third polyethylene plant with a 250-million-pound year capacity will be completed at Texas Eastman in 1992 to keep up with the demands for packaging film.

[PHOTOS OMITTED: "Airwick's Magic Mushroom household air fresheners is one of several applications for Estron acetate filter tow. Eastman is the worldwide leader in the filter tow market"; "Stouffer's serves up its best in trays made of Kodar Thermx copolyester. With superior strength over a whole range of temperatures, this lightweight plastic can go directly from the freezer to a conventional or microwave oven. It maintains its shape and the food's taste."]

Fibers

Polyester staple posted level sales when compared with 1988, as lower volume was offset by higher prices. Although Eastman exited the weaving segment of this business in November, discontinuing production of staple fiber at Carolina Eastman in Columbia, it remains a strong and committed participant in selected polyester staple markets. At its Kingsport, Tennessee, facility, Eastman continues to produce polyester staple fiber for blended knits, sewing thread, fiberfill,

[*15] [HARDCOPY PAGES 16-18]

[HARDCOPY PAGE 16]

nonwovens and other highly specialized niche markets.

Changing fashion trends enhanced the domestic industry consumption of Estron and Chromspun acetate yarns. Export business remained strong as well. As a result, 1989 concluded almost four years of uninterrupted capacity operations.

Focusing on customers and working through quality partnership and a team management approach, the restructured fibers business significantly improved operating margins.

Eastman's leadership in the filter products market is maintained by improving quality and by providing excellent service to its customers worldwide. Filter products account for a significant share of ECC's business outside the U.S., with the greatest growth coming in the People's Republic of China and other Asian countries.

[PHOTO OMITTED: "Sales of Easton and Chromspun acetate yarn are up particularly in Asia. Much of it ends up in the lining of suits and dresses."]

[HARDCOPY PAGE 17]

[PHOTO OMITTED: "(Right) Beauty is more than skin deep. Injection molded parts of Tenite cellulosics supplied by Eastman Chemical Company help ensure the physical details, color matching of flesh tones and fine finish that children and collectors around the world have come to expect in every Madame Alexander doll."]

[HARDCOPY PAGE 18]

[PHOTO OMITTED: "Kodak and Sterling products complement each other to serve expanding health core markets."]

[*16] [HARDCOPY PAGE 19]

Health

The newly aligned Health group consists of the health-related businesses of Sterling Drug Inc., Health Sciences, Clinical Products, and Lehn & Fink Products (a Sterling division).

The 1988 acquisition of Sterling has greatly intensified Kodak's effort in the health care field, combining Sterling's strength in pharmaceutical and consumer health products with Kodak's leadership in medical imaging markets and a growing clinical diagnostics business. Since being acquired, Sterling has consistently met its financial forecast, including a positive cash contribution in 1989.

Performance Overview	1989	1988	Change
Sales (in millions)	$4,009	$3,597	+11%
Earnings from Operations	487 (*)	591	-18%

Sterling Drug Inc.

Sterling participates in two health-related business: pharmaceutical products and consumer health products.

Focused marketing on key products, coupled with product introductions and a strategic acquisition, enhanced sales in 1989. Operating efficiencies, plant rationalizations and organizational restructuring also enhanced performance.

Ten Sterling plants have been closed in the past two years and a number of non-core products and businesses have been divested.

[PHOTO OMITTED: "New enteric-coated Bayer aspirin provides relief for patients on a regular aspirin regimen."]

Pharmaceutical products are marketed by Winthrop Pharmaceuticals in the U.S. and by Sterling International in the rest of the world.

Sales growth of Sterling's Omnipaque (iohexol), a leading contrast agent for enhancement of radiographic procedures, has fueled excellent performance.

Inocor (amrinone), an inotropic/vasodilator agent for the treatment of acute heart failure, posted strong sales gains worldwide.

Carpuject, individual-dose cartridges pre-filled with commonly used hospital medications which offer greater safety for patients and nursing personnel, had solid sales increases in the U.S.

Lipanor (ciprofibrate), marketed in France for the reduction of high

cholesterol and triglyceride levels, continued its strong market performance.

During the year, Sterling acquired Pharma Investi, a Madrid-based supplier of ethical pharmaceuticals. The firm sells, among other products, Dolalgial, a leading analgesic in the Spanish market.

Key to Sterling's future is itS R&D in diagnostic imaging, cardiovascular medicine, oncology, viral diseases, and disorders of the central nervous system. Research efforts were refocused and accelerated during 1989, furthering the development of a number of important new compounds.

The company has advanced a new, non-ionic low osmolar agent for vascular imaging as a successor to its Omnipaque brand. Also, Sterling is progressing with new enhancement agents for magnetic resonance imaging (MRI) and has obtained rights to market in North America and selected countries a new product for MRI enhancement of the central nervous system. Clinical trials for regulatory submission in the U.S. have been completed.

In the cardiovascular field, milrinone in intravenous form for the treatment of heart failure is being introduced in Belgium, France, Holland, and the U.S., while the oral form continues through its final stage of clinical trials.

PEG-SOD, polyethylene glycol superoxide dismutase, continues in clinical development as a treatment to prevent injury to tissues and vital organs following surgery or physiological events that diminish the supply of blood.

Interleukin-4, a lymphokine for treatment of solid tumors in cancer patients, continues to advance in development.

Sterling Research Group is consolidating its U.S. research operations in a new facility to be constructed in the Philadelphia area. This will strengthen the company's research capability and complement existing research in Alnwick, England and Dijon, France.

In consumer health products, analgesics continue to be a pillar of Sterling's worldwide business.

Panadol brand acetominophen made significant advances in most international markets, particularly in Australia where it is the leading over-the-counter pain-reliever. Panadeine analgesic sales were also significant in Australia,

[*17] [HARDCOPY PAGE 20]

as were sales of Solpadeine analgesic in the U.K.

During the year, Sterling moved aggressively to introduce Canada's first over-the-counter ibuprofen analgesic, Actiprofen. It maintains the market leadership position despite heavy competition.

Other non-prescription lines marketed internationally achieved stronger

market positions in 1989, including Verecolene, a leading laxative in Italy.

In the U.S. Glenbrook Laboratories' leading brands are Bayer aspirin, Phillips' milk of magnesia and Midol menstrual relief products. In 1989 therapy Bayer, a new enteric-coated aspirin, was added to the Bayer family. Its coating allows the caplet to pass to the intestines before dissolving, thus protecting against stomach upset and making therapy Bayer especially well-suited for patients on a regular aspirin regimen.

Glenbrook's Midol PMS, children's Panadol and Campho-Phenique first aid products performed well during this year.

[PHOTO OMITTED: "New antibiotic spray plus pain reliever helps prevent infection and relieves the pain of minor cuts, scrapes and burns."]

Neo-Synephrine, the leading fast-acting nasal decongestant, consolidated its line into five products, each with unique customer benefits.

In order to bring more new products to market, a consumer health R&D unit is being established near Princeton, New Jersey.

Sterling has greatly intensified Kodak's effort in the health care field.

Health Sciences

Sales of traditional x-ray products were stable in 1989, as competitive pricing and the dollar's value in world exchange offset volume advances. Electronic imaging products, representing a much smaller market, reported sharp increases in both sales and volume.

The world's leader in radiographic imaging, Kodak's Health Sciences Division conducts slightly more than half of its business outside the U.S. Greatest sales-volume gains in 1989 came in Canada and the AAA region.

The Kodak Ektascan laser printer, which produces high resolution film radiographs from

[*18] [HARDCOPY PAGE 21]

electronic sources, led the sales increase among electronic products. The new Kodak Ektascan image manager enables hospitals to connect up to three electronic imaging devices, such as CT scanners or magnetic resonance imagers, to the Kodak Ektascan laser printer and allows simultaneous filming from all three devices.

To hasten development of other promising technologies, Health Sciences has merged its research function into the business unit. In combination with the R&D Partners Program, new diagnostic imaging technologies are being placed in the hands of leading clinicians at teaching centers around the world, from computed radiography at Osaka University in Japan to scanning technology at Duke University in the U.S.

In traditional radiography, the Kodak multiloader 700, which provides

fast daylight loading of x-ray film cassettes, earned substantial volume gains in the U.S. and Europe.

The Kodak X-Omatic RA cassette significantly reduces radiographic exposure for pediatric patients. Designed with newborns to overweight adolescents in mind, it is the lowest-absorption pediatric cassette commercially available.

Phillips Medical Systems of North America and Oldelft Corporation of America will market the Advanced Multiple Beam Equalization Radiography (AMBER) system with Kodak T-Mat films and Lanex screens in the U.S. and Canada. The AMBER system offers unprecedented image clarity in thoracic imaging and compensates for variations in tissue density which tend to distort images. Kodak will market the system outside the U.S. and Canada.

Kodak remains the worldwide market leader of dental imaging products, with sales increasing slightly in 1989.

Clinical Products

Dispersed testing and mainframe slides led excellent worldwide gains in volume and revenues for Clinical Products. Europe posted the largest percentage increase while the U.S. posted the largest dollar increase.

Kodak Ektachem clinical dry chemistry slides are now used in more than 13,000 analyzers in over 50 countries worldwide. In today's cost conscious health market, dry chemistry provides a number of advantages. It requires less expertise and time on the part of medical technicians, reduces waste problems, and in many applications is more cost effective than wet chemistry systems.

In the equipment arena, the Kodak Ektachem 500 analyzer for small-to-medium sized labs performed very well in its first year, and a new accessory was added to the Ektachem 700 analyzer, increasing the machine's productivity by 45 percent.

The desktop Ektachem DT 60 analyzer now can conduct a complete lipid profile on a single finger stick, and in a matter of minutes.

Two new SureCell rapid test kits for chlamydia and herpes also were made available in 1989. The herpes test is the only kit of its kind approved for the market. Other SureCell test kits included those for pregnancy and Strep-A.

[PHOTOS OMITTED: "Concerns about the impact of cholesterol counts have made the Kodak DT 60 analyzer, with its ability to test for both good cholesterol (HDL) and bad (LDL), very popular among physicians."; "Glass Mates one-step glass cleaning wipes are perfect for cleaning glass, mirrors, chrome, appliances, windshields and other shiny surfaces."]

Lehn & Fink Products

Lehn & Fink Products (L&F) achieved good sales gains in 1989 by expanding existing product lines, developing and introducing innovative products, and accomplishing key acquisitions.

A leading marketer of well-known consumer products, Lehn & Fink builds leadership positions through its commitment to quality products that respond to rapidly changing customer needs.

During 1989, the unit focused its activities into two distinct operating groups, one for Household Products, which includes cleaners, disinfectants and personal care products, and one for Do-It-Yourself Products such as wood finishes, stains and sealers.

For household products, 1989 was a year of growth and innovation. Lysol toilet bowl cleaner and Cling fresh scent toilet bowl cleaner achieved solid sales gains with the introduction of more convenient-to-use angle necked bottles.

[*19] [HARDCOPY PAGES 22-24]

[HARDCOPY PAGE 22]

Resolve carpet cleaner's new anti-resoiling formula boosted it to the number one position in its category. Love My Carpet potpourri fragrance rug and room deodorizer registered strong volume gains.

The Lysol product line was extended with a "light scent" variation of Lysol spray disinfectant and an innovative new product, Lysol bathroom Touch-Ups. When moistened, these dry towelettes activate special Lysol cleaners and disinfectants.

One of the unit's most important new products in 1989 was Glass Mates premoistened towelettes for cleaning glass and other shiny surfaces. In less than a year, Glass Mates became the second fastest selling product in the glass cleaner category, while at the same time significantly expanding total category sales.

[PHOTO OMITTED: "Formby's wood finishing centers offer customers instore computerized assistance with their home improvement projects. Many, like this one, provide information via a Kodak Diconix 150 plus printer."]

Do-It-Yourself volume growth was boosted by acquisitions and the continued success of established Minwax and Thompson's products The newly acquired Watco-Dennis line of premium wood finishes will expand nationally through the Minwax division. The well known Red Devil line e specialty enamels and coatings, also acquired in 1989, will be marketed through the Thompson & Formby Division.

The year ended with the purchase of a 78,000 square foot building in Montvale, NJ, to serve as Lehn & Fink's new Research and Development Center. An essential step in L&F's future growth, this Center will house more than 180 scientists and technicians, doubling L&F's R&D effort.

[HARDCOPY PAGE 23]

[PHOTO OMITTED: "Kodak and Sterling product lines are in step with health conscious consumers who seek not only physical exercise but preventive health care."]

Execution Copy

ASSET PURCHASE AGREEMENT

among

EASTMAN KODAK COMPANY

and

L&F PRODUCTS INC.

and

STERLING WINTHROP INC.

and

RECKITT & COLMAN PLC

Dated as of September 26, 1994

Circulated October 5, 1994

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ASSET PURCHASE AGREEMENT, dated as of September 26, 1994, among EASTMAN KODAK COMPANY, a New Jersey corporation ("Kodak"), L&F PRODUCTS INC., a Delaware corporation ("Seller"), STERLING WINTHROP INC. ("Sterling"), a Delaware corporation, and RECKITT & COLMAN PLC, a public limited company incorporated under the laws of England and Wales ("Purchaser").

W I T N E S S E T H:

WHEREAS, Sterling, a wholly-owned direct subsidiary of Seller, is engaged worldwide, through its L&F Products Division (including the entities identified on Schedule 3.2(a)(i)) and certain other subsidiaries of Kodak, in household products, professional products, personal products and "Do It Yourself" ("DIY") products businesses; and

WHEREAS, Kodak and Seller, a wholly-owned direct subsidiary of Kodak, have agreed to cause Sterling to transfer, and Sterling has agreed to transfer, the L&F Products Division to Seller and one or more Affiliates of Kodak (the "L&F Transfer") prior to consummation of the sale of the stock of Sterling pursuant to the Stock Purchase Agreement, dated as of August 28, 1994, between Kodak and SmithKline Beecham plc (the "Sterling Stock Purchase Agreement"); and

WHEREAS, following the L&F Transfer, Seller and Kodak desire to sell, transfer and assign to Purchaser and

to cause Affiliates of Seller to sell, transfer and assign to Purchaser, and Purchaser desires to purchase and assume from Seller, Kodak and such Affiliates of Seller, substantially all the assets and specified liabilities of the household products, professional products and personal products businesses of the L&F Division (including, without limitation, the manufacturing, marketing, sale and distribution of the Current Products and related support operations, research and development activities and all inventories and other assets of such businesses) (collectively, the "Business"), all as more specifically provided herein;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and subject to and on the terms and conditions herein set forth, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND TERMS

Section 1.1 Specific Definitions. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

"Accounts Payable to Kodak" shall mean all U.S. Intercompany Accounts Payable that are outstanding at any time prior to the Closing to (x) Kodak or (y) a U.S. Affiliate of Kodak that does not constitute part of the Business.

"Accounts Receivable from Kodak" shall mean all U.S. Intercompany Accounts Receivable that are outstanding at any time prior to the Closing from (x) Kodak or (y) a

U.S. Affiliate of Kodak that does not constitute part of the Business.

"Active Employees" shall have the meaning set forth in Section 5.5(d).

"Adjusted Closing Balance Sheet" shall have the meaning set forth in Section 2.6(b).

"Affiliates" shall mean, with respect to any Person, any Persons directly or indirectly controlling, controlled by, or under common control with, such other Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made.

"Agreement" shall mean this Agreement, as the same may be amended or supplemented from time to time in accordance with the terms hereof.

"Ancillary Agreements" shall mean the Transition Services Agreement and the Supply Agreement.

"Assumed Liabilities" shall have the meaning set forth in Section 2.3.

"Balance Sheet", which is included as Schedule 3.7(a)(i) hereto, shall mean the unaudited pro forma balance sheet of the Business as at December 31, 1993 prepared on the basis set forth in the notes thereto and Schedule 3.7(a)(ii) hereto.

"Base Amount" shall mean U.S. $146.2 million.

"Benefit Plans" shall have the meaning set forth in Section 3.10(a).

"Books and Records" shall mean all books, ledgers, files, reports, customer and supplier lists, documents (including, without limitation, credit information), plans and operating records of, or maintained by, the Business, as the case may be, except to the extent included in or related solely to any Excluded Assets.

"Business" shall have the meaning set forth in the recitals of this Agreement.

"Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banks in New York City or London are authorized or obligated by law or executive order to close.

"Cap" shall have the meaning set forth in Section 7.3(c).

"Chosen Courts" shall have the meaning set forth in Section 9.11.

"Claim Notice" shall have the meaning set forth in Section 7.4.

"Closing" shall mean the closing of the transactions contemplated by this Agreement.

"Closing Balance Sheet" shall have the meaning set forth in Section 2.6(a).

"Closing Date" shall have the meaning set forth in Section 2.7(a).

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Competition Laws" shall mean statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

"Confidentiality Agreement" shall mean the Agreement, dated May 26, 1994, between Purchaser and Kodak.

"Consideration" shall have the meaning set forth in Section 5.4(e).

"Contracts" shall mean all agreements, powers of attorney, contracts, leases including with respect to the Leased Real Property), purchase orders, arrangements, commitments and non-governmental licenses that are Related to the Business or to which the Transferred Assets are subject.

"CPA Firm" shall have the meaning set forth in Section 2.6(b).

"Current Assets" shall mean all Inventory and all other current assets of the Business (including written-off accounts receivable) other than (i) cash (net of cash overdrafts), (ii) investment securities and other short-term investments and (iii) Accounts Receivable from Kodak.

"Current Liabilities" shall mean all current liabilities of the Business other than (i) short-term indebtedness for money borrowed (other than overdrafts),

(ii) Accounts Payable to Kodak and (iii) accrued and unpaid U.S. Federal, state and local income Taxes and foreign income Taxes other than those relating to the Transferred Subsidiaries and their subsidiaries with respect to the taxable periods, or portions thereof, ending on or before the Closing Date.

"Current Products" shall mean those products currently manufactured by the Business, as listed in Schedule 1.1(a).

"Currently" shall mean since January 1, 1993.

"Determination Time" shall mean the close of business on the date immediately preceding the Closing Date.

"DIY Business" shall have the meaning set forth in Section 2.2(a).

"Due Date" shall mean, with respect to a Tax Return, the date on which such Tax Return is due to be filed (taking into account all applicable extensions).

"Employees" shall mean all current and former employees of Seller or any Affiliate of Seller who were or are dedicated to the Business.

"Encumbrances" shall mean liens, charges, encumbrances, security interests, options, or any other restrictions or third party rights.

"Environmental Claim" shall mean any accusation, allegation, notice of violation, action, claim, Environmental Lien, demand, abatement or other order or direction (conditional or otherwise) arising under any Environmental Law or Environmental Permit by any Person for personal injury (including sickness, disease or death), tangible or intangible property damage, damage to the environment, nuisance, pollution, contamination or other adverse effects on the environment, or for fines, penalties or restrictions resulting from or based upon (i) the existence, or the continuation of the existence, of a Release (including, without limitation, sudden or non-sudden accidental or non-accidental Releases) of, or exposure to, any Hazardous Substance, odor or audible noise in, into or onto the environment (including, without limitation, the air, soil, surface water or groundwater) at, in, by, from or related to any property, activities or operations; (ii) the transportation, storage, treatment or disposal of Hazardous Substances in connection with any property, activities or operations; or (iii) otherwise involving the violation, or

alleged violation, of any Environmental Law or Environmental Permit relating to any property, activities or operations.

"Environmental Law" shall mean any Laws or other requirement relating to the environment, natural resources, or, as they relate to Hazardous Substances, employee health and safety and includes, but is not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 33 U.S.C. § 2601 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., FIFRA, the Oil Pollution Act of 1990, 33 U.S.C § 2701 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq. and Section 25249.6 of the California Health and Safety Code, as such laws have been or may be amended or supplemented, and the regulations promulgated pursuant thereto, and all analogous state or local statutes.

"Environmental Lien" shall mean any lien in favor of any Federal, state, local or foreign governmental authority arising under Environmental Laws.

"Environmental Permit" shall mean any permit, approval, authorization, license, variance, registration or permission required under any applicable Environmental Law.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" shall have the meaning set forth in Section 3.10(c).

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Excluded Assets" shall have the meaning set forth in Section 2.2.

"Excluded Liabilities" shall have the meaning set forth in Section 2.4.

"FIFRA" shall mean the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

"Financial Statements" shall have the meaning set forth in Section 3.7(a).

"Fixtures and Equipment" shall mean all furniture, fixtures, furnishings, machinery, vehicles, equipment, tools and other tangible personal property Related to the Business.

"Former Employees" shall mean all Employees of Sterling, Seller and their Affiliates, who, on or before the Closing Date, have retired, are receiving or are eligible to receive long-term disability benefits, or have otherwise terminated employment, and beneficiaries and survivors of such Employees.

"GAAP" shall mean United States generally accepted accounting principles.

"Governmental Authorizations" shall mean all licenses, permits, certificates, orders, decrees and other authorizations and approvals required to carry on the Business as currently conducted under any applicable Laws.

"Hazardous Substances" shall mean any hazardous substances within the meaning of 101(14) of CERCLA, 42 U.S.C. § 9601(14), or any substance, pollutant or constituent that is regulated under any Environmental Law, including, without limitation, petroleum and petroleum products.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"ILRPTA" shall have the meaning set forth in Section 5.7.

"Inactive Employees" shall have the meaning set forth in Section 5.5(d).

"Indemnified Parties" shall have the meaning set forth in Section 7.3(a).

"Indemnifying Party" shall have the meaning set forth in Section 7.4.

"Intellectual Property" shall mean the intellectual property rights Related to the Business including: trademarks (including the Selected Marks), service marks, brand names, certification marks, license rights, software rights, trade dress, assumed names, trade names and other indications of origin, the goodwill associated with the foregoing and registrations in any jurisdiction of, and applications in any jurisdiction to register, the foregoing, including any extension, modification or renewal of any such registration or

application; inventions, discoveries and ideas, whether patentable or not in any jurisdiction; patents, applications for patents (including, without limitation, divisions, continuations, continuations in-part and renewal applications), and any renewals, extensions or reissues thereof, in any jurisdiction; non-public information, trade secrets, know how and confidential information and rights in any jurisdiction to limit the use or disclosure thereof by any Person; writings and other works, whether copyrightable or not in any jurisdiction; registrations or applications for registration of copyrights in any jurisdiction, and any renewals or extensions thereof; any similar intellectual property or proprietary rights; and any claims, causes of action or rights to past, present and future damages arising out of or related to any infringement or misappropriation of any of the foregoing. Schedule 3.13(a) sets forth a list of certain of the Intellectual Property.

"Inventory" shall mean all inventory held for resale and all raw materials, work in process, finished products, wrapping, supply and packaging items Related to the Business.

"Investment Canada Act" shall mean the Investment Canada Act, R.S.C. ch. 20 (1985), as amended.

"ISRA" shall have the meaning set forth in Section 5.7.

"Knowledge" or any similar phrase means the actual knowledge of the individuals listed on Schedule 1.1(e) hereto.

"Knowledge of Purchaser" or any similar phrase means the actual knowledge of the individuals listed on Schedule 1.1(f) hereto.

"Kodak" shall have the meaning set forth in the recitals.

"Kodak Affiliated Transferor" shall have the meaning set forth in Section 3.3.

"Kodak Transferred Assets" shall mean Transferred Assets that are owned directly or indirectly by Kodak and subsidiaries of Kodak other than Seller or subsidiaries of Seller.

"L&F Transfer" shall have the meaning set forth in the recitals.

"Laws" shall include any federal, state, foreign or local law (including common law), statute, code, ordinance, rule, regulation, order, judgment, injunction or decree.

"Leased Real Property" shall mean all real property leased by Seller or any of its Affiliates, including any buildings, facilities, fixed assets, structures and improvements thereon or appurtenances thereto, Related to the Business.

"Licenses" shall mean all governmental franchises, licenses, authorizations and permits held by Seller or any of its Affiliates which pertain to and are used in connection with the Business and/or the Transferred Assets.

"London Stock Exchange" shall mean the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited.

"Losses" shall have the meaning set forth in Section 7.2.

"Material Adverse Change" shall mean a change that has been or is reasonably likely to be, materially adverse to the value of the Transferred Assets taken as a whole or materially adverse to the business, financial condition or results of operations of the Business taken as a whole.

"Material Adverse Effect" shall mean an effect that is, or is reasonably likely to be, materially adverse to the value of the Transferred Assets taken as a whole or materially adverse to the business, financial condition, or results of operations of the Business taken as a whole.

"Net Worth" shall be determined in accordance with Schedules 2.6 and 3.7(a)(ii).

"Nonmedical Leave" shall mean maternity or paternity leave, leave under the Family and Medical Leave Act of 1993, educational leave, military leave with veteran's reemployment rights under federal law, or personal leave (unless any of such leaves could have been granted for medical reasons).

"Notice Period" shall have the meaning set forth in Section 7.4.

"Owned Real Property" shall mean all real property beneficially owned by Seller or any of its Affiliates, including any buildings, facilities, fixed assets,

structures and improvements thereon or appurtenances thereto, Related to the Business.

"Payor" shall have the meaning set forth in Section 5.4(b).

"Payor's Amount" shall have the meaning set forth in Section 5.4(b).

"Pension Plan" shall have the meaning set forth in Section 3.10(b).

"Permitted Encumbrances" shall have the meaning set forth in Section 3.16(b).

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization.

"PineSol Litigation" shall mean L&F Products v. The Clorox Co., Civ. No. C-247-91 (N.J. Superior Ct. - Bergen County) and Clorox Co. v. Sterling Winthrop Inc., CV 92-0386 (RJD) (E.D.N.Y.).

"Post-Sanofi Closing Date Former Employees" shall mean all Employees who, on or after the Closing Date under the Sanofi Agreement, retire, become eligible to receive long-term disability benefits, or otherwise terminate employment.

"Preparer" shall have the meaning set forth in Section 5.4(b).

"Proceedings" shall have the meaning set forth in Section 3.8(a).

"Purchase Price" shall have the meaning set forth in Section 2.5.

"Purchaser" shall have the meaning set forth in the recitals.

"Purchaser Indemnified Parties" shall have the meaning set forth in Section 7.3(a).

"Purchaser's Objection" shall have the meaning set forth in Section 2.6(b).

"Recipient" shall have the meaning set forth in Section 5.4(d).

"Related to the Business" or "Related to the Transferred Assets" shall mean primarily arising out of or related to, or used primarily in connection with, the Business or the Transferred Assets, as the case may be, prior to the Closing.

"Release" means any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching, or migration on or into the indoor or outdoor environment or into or out of any property.

"Remedial Action" means all actions, including, without limitation, any capital expenditures, required under any applicable Environmental Law or voluntarily undertaken to (i) clean up, remove, treat, or in any other way address any Hazardous Substance or other substance to the extent required by Environmental Laws; (ii) prevent the Release or threat of Release, or minimize the further Release, of any Hazardous Substance or other substance so it does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment to the extent required by applicable Environmental Laws; (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care to the extent required by applicable Environmental Laws; or (iv) otherwise bring any property and the facilities located and operations conducted thereon into compliance with all Environmental Laws and Environmental Permits.

"Retirement Plan Employees" shall have the meaning set forth in Section 5.5(f).

"Savings Plan Employees" shall have the meaning set forth in Section 5.5(e).

"Selected Marks" shall have the meaning set forth in Section 3.13(b).

"Seller" shall have the meaning set forth in the recitals.

"Seller Indemnified Parties" shall have the meaning set forth in Section 7.2.

"Seller Retirement Plans" shall have the meaning set forth in Section 5.5(f).

"Seller Savings Plans" shall have the meaning set forth in Section 5.5(e).

"Seller Transferred Assets" shall mean Transferred Assets that are beneficially owned directly or indirectly by Seller.

"Sterling Foreign Service Pension Plan" shall have the meaning set forth in Section 5.5(h).

"Sterling Trademarks" shall have the meaning set forth in Section 2.2(o).

"Subsidiaries" shall mean the corporations and other entities engaged in the Business 50% or more of the equity interests in which are beneficially owned directly or indirectly by Kodak, as set forth in Schedule 3.2(a)(i).

"Supply Agreement" shall have the meaning set forth in Section 5.13.

"Tax Audit" shall have the meaning set forth in Section 5.4(d).

"Tax Item" shall mean, with respect to Taxes, any item of income, gain, deduction, loss or credit or any other tax attribute.

"Tax Package" shall have the meaning set forth in Section 5.4(c).

"Tax Returns" shall mean all reports and returns required to be filed with respect to Taxes.

"Taxes" shall mean all federal, state, local or foreign taxes, including but not limited to income, gross receipts, windfall profits, value added, ad valorum, profits, payroll, stamp, occupational, premium, severance, property, production, sales, use, license, excise, franchise, employment, withholding or similar taxes, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

"Transfer Taxes" shall have the meaning set forth in Section 5.4(g).

"Transferee Pension Plans" shall have the meaning set forth in Section 5.5(f).

"Transferee Savings Plans" shall have the meaning set forth in Section 5.5(e).

"Transferred Assets" shall have the meaning set forth in Section 2.1.

"Transferred Employees" shall have the meaning set forth in Section 5.5(b).

"Transferred Subsidiaries" shall mean Schulke & Mayr GmbH and any other Subsidiaries the equity interests in which (as opposed to the assets and liabilities of which) are to be transferred to Purchaser pursuant to this Agreement, as set forth in Schedule 2.1(g).

"Transition Services Agreement" shall have the meaning set forth in Section 5.12.

"U.S. Antitrust Laws" shall mean and include the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and all other United States federal or state Competition Laws.

"U.S. Intercompany Accounts Payable" shall mean accounts payable of the Business that Relate to portions of the Business conducted in the United States.

"U.S. Intercompany Accounts Receivable" shall mean accounts receivable of the Business that arise out of the portions of the Business conducted in the United States.

"WARN" shall mean the Worker Adjustment and Retraining Notification Act.

Section 1.2 Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement.

Section 1.3 Other Definitional Provisions.

(a) The words "hereof", "herein", and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) The terms "dollars" and "$" shall mean United States dollars.

ARTICLE II

PURCHASE AND SALE OF THE BUSINESS

Section 2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth herein, at the Closing, Seller and Kodak agree to, and Kodak agrees to cause Seller and all other Affiliates of Kodak to, convey, transfer, assign and deliver to Purchaser, and Purchaser agrees to purchase, or to cause its Affiliates to purchase, from Seller, Kodak or any other Affiliate of Kodak, as the case may be, all direct or indirect right, title and interest of Seller, Kodak or such other Affiliates of Kodak, as the case may be, in and to all of the Business and all of the assets Related to the Business, whether tangible or intangible, real or personal, and wherever located (the "Transferred Assets"). The Transferred Assets shall include without limitation (other than as specifically limited by (a) through (m) of this Section 2.1), all of the direct and indirect right, title and interest of Seller, Kodak and any other Affiliate of Kodak in the following:

(a) The Owned Real Property, Leased Real Property and no other real property;

(b) The Fixtures and Equipment;

(c) The Current Assets;

(d) The Intellectual Property;

(e) The Contracts;

(f) All insurance policies owned by Seller that relate primarily to Assumed Liabilities or are Related to the Business or are Related to the Transferred Assets, provided, in each case, that such policies are assignable and remain in effect following the Closing;

(g) All of the capital stock and other equity interests in the Transferred Subsidiaries;

(h) All Books and Records of, or maintained by, the Business;

(i) All prepaid Taxes to the extent such Taxes would, if not prepaid, be Assumed Liabilities;

(j) Subject to Section 5.4(i), all refunds of Taxes to the extent such Taxes are, or if not paid would be, Assumed Liabilities;

(k) All rights to the extent Related to the Business of Seller, Sterling or Kodak under confidentiality agreements with prospective purchasers of the Transferred Assets or the DIY Business;

(l) All Licenses; and

(m) All other tangible and intangible assets of the Business, including the goodwill of the Business.

Section 2.2 Excluded Assets. Notwithstanding anything herein to the contrary, from and after the Closing,

Seller, Sterling or Kodak, as the case may be, shall retain all of its direct and indirect right, title and interest in and to, and there shall be excluded from the sale, conveyance, assignment or transfer to Purchaser hereunder, and the Transferred Assets shall not include, the following (collectively, the "Excluded Assets"):

(a) The DIY Business of the L&F Products Division, including the business conducted by Minwax Company Inc., Thompson & Formby Inc., L&F Products (UK) Limited and L&F Products Ireland Limited and similar DIY businesses conducted by L&F Canada, Inc., L&F Products Caribbean Inc. and such other indirect and direct foreign subsidiaries of Seller and Sterling, to the extent such subsidiaries are engaged in the DIY Business (including the manufacturing, marketing, sales, distribution, support operations and research and development activities related to the above-described businesses and all inventories and other assets of such businesses) (the "DIY Business");

(b) Sterling's ethical and over-the-counter drug businesses, including the business conducted by the Pharmaceuticals Group and Sterling Health divisions of Sterling (including the manufacturing, marketing, sales, distribution, support operations and research and development activities related thereto and all inventories and other assets of such businesses) (the "Ethical and OTC Businesses");

(c) The joint ventures established by the OTC Business Joint Venture Agreement between Sterling and Sanofi, a société anonyme organized under the laws of the French Republic;

(d) All Intellectual Property set forth in Schedule 2.2(d);

(e) Subject to the provisions of Section 5.17, Seller's rights under all insurance policies, including insurance policies in respect of directors and officers who are Transferred Employees and to all claims against insurance carriers (other than rights under any insurance policy or to any claim referred to in Section 2.1(f);

(f) Seller's rights in connection with and any recovery arising from the proceedings set forth in Schedule 2.2(f);

(g) Cash, investment securities and other short- and medium-term investments and Accounts Receivable from Kodak;

(h) All prepaid Taxes to the extent such Taxes are not reflected on the Adjusted Closing Balance Sheet and are, or if not prepaid would be, Excluded Liabilities;

(i) All refunds of Taxes to the extent such Taxes are not reflected on the Adjusted Closing Balance Sheet and are, or if not paid, would be, Excluded Liabilities;

(j) Subject to the provisions of Section 5.4(m), all Tax Returns of Seller, Sterling or Kodak;

(k) All real property or interests in real property other than the Owned Real Property and the Leased Real Property;

(l) The Fixtures and Equipment on all real property or interests in real property described in Section 2.2(k);

(m) All Books and Records which Seller, Sterling or Kodak is required by law to retain;

(n) All rights to the names "Eastman" and "Kodak";

(o) Subject to the provisions of Section 5.9, all rights to the names "Sterling", "Winthrop", "Valmont", "Hinds" and to the Sterling "ankh" symbol (such names and symbols, the "Sterling Trademarks"); and

(p) All rights of Seller or any Affiliate of Seller that has any direct or indirect interest in the name "Kodan" to commence interferences, litigations or administrative proceedings to restrict the use of the "Kodak" name by Kodak or any Affiliate of Kodak.

Section 2.3 Assumption of Liabilities. On the terms and subject to the conditions set forth herein, at the Closing, Purchaser agrees to assume and discharge or perform when due, or to cause to be assumed and discharged or performed when due, all debts, liabilities, or obligations whatsoever, other than Excluded Liabilities, that are Related to the Business, whether arising before or after the

Closing and whether known or unknown, fixed or contingent (the "Assumed Liabilities") including, without limitation, the following:

(a) The Contracts;

(b) All liabilities reflected or reserved for in the Adjusted Closing Balance Sheet to the extent so reflected or reserved for;

(c) All liability, if any, for damages awarded upon final adjudication or settlement of the PineSol Litigation relating solely to the period commencing on the Closing Date and 80% of the fees and expenses of attorneys, experts and consultants incurred in the PineSol Litigation with respect to the period from and after the Closing Date; and

(d) All liabilities arising out of or relating to the employment or termination of employment of Active and Inactive Employees, the obligation to reimburse Sterling as provided in Section 5.5(h) and the liability referred to in Section 5.5(i).

Section 2.4 Excluded Liabilities. Notwithstanding anything to the contrary contained in this Agreement, neither Purchaser, any of its Affiliates nor any of its or its respective Affiliates' directors, shareholders, officers, employees, agents, consultants, attorneys, advisers, representatives, successors, transferees or assignees shall, as a result of this Agreement or

the transactions contemplated hereby, assume or have any responsibility or liability for the following debts, liabilities and obligations (the "Excluded Liabilities"):

(a) All liabilities arising out of or relating to the Excluded Assets (including, without limitation, all spontaneous combustion and other product liability claims arising from products of the DIY Business, whether manufactured before, on or after the Closing Date);

(b) Subject to Section 5.4(g), (i) all liabilities for Taxes imposed with respect to the taxable periods, or portions thereof, ending on or before the Closing Date, including, without limitation, any Taxes resulting from any Transferred Subsidiary (or its subsidiaries) having been, or ceasing to be, included in any consolidated, combined or unitary Tax Return that included a Transferred Subsidiary (or its subsidiaries) for taxable periods, or portions thereof, ending on or before the Closing Date and (ii) all liabilities for Taxes of any member of a consolidated, combined or unitary group of which a Transferred Subsidiary (or its subsidiaries) is or was a member on or prior to the Closing Date, by reason of the application of Treasury Department Regulation Section 1.1502-6 or a similar provision of any state, local or foreign income tax law or regulation, except, with respect to clause (i) or (ii), to the extent such Taxes are

reflected as Current Liabilities on the Adjusted Closing Balance Sheet;

(c) All Accounts Payable to Kodak and cash overdrafts;

(d) Subject to Sections 2.3(c) and 5.16, all liability, if any, for damages awarded upon final adjudication or settlement of the PineSol Litigation relating to the period prior to the Closing Date and any and all fees and expenses of attorneys, experts and consultants incurred in the PineSol Litigation;

(e) All liabilities and obligations arising from any Environmental Claims or Remedial Action (i) resulting from the Release, disposal or arrangement for disposal of Hazardous Substances relating to the Business (by Seller, Sterling, any of their Affiliates or any predecessor thereof) other than on or emanating from the Owned Real Property or the Leased Real Property, and (ii) otherwise relating to any property other than the Owned Real Property and the Leased Real Property;

(f) All other debts, liabilities and obligations for which Seller, Kodak or any of their Affiliates, as the case may be, has expressly assumed responsibility pursuant to this Agreement, including pursuant to Article VII;

(g) Subject to Section 2.5(b), 5.5(h) and 5.5(i), all liabilities arising out of or relating to the employment

or termination of employment of Former Employees by Seller or its Affiliates; and

(h) All debts, liabilities or obligations whatsoever, whether arising before or after the Closing and whether known or unknown, fixed or contingent, that are not Related to the Business or the Transferred Assets.

Section 2.5 Purchase Price.

(a) On the terms and subject to the conditions set forth herein, Purchaser agrees to pay Seller, for the account of Seller, Kodak and the Affiliates of Kodak that transfer Transferred Assets, $1,550,000,000 (the "Purchase Price"). The Purchase Price shall be allocated among Seller, Kodak and its Affiliates as provided in Section 5.4(e). The Purchase Price shall be subject to adjustment as provided in Section 2.6.

(b) In addition to the foregoing, Purchaser shall pay to Sterling within 30 days after the later of the Closing Date or the date Purchaser receives a statement of the account balances of all Active Employees, Inactive Employees and Post-Sanofi Closing Date Former Employees under the Sterling Winthrop Inc. Deferred Compensation Plan on the Closing Date (subject to review and acceptance by Purchaser), an amount equal to such balances.

Section 2.6 Business Post-Closing Adjustments.

(a) Within 60 days following the Closing, Seller shall, at its expense, prepare, or cause to be prepared, and

deliver to Purchaser a balance sheet (the "Closing Balance Sheet") which shall set forth the assets and liabilities of the Business as of the Determination Time in accordance with the principles and the methods set forth on Schedule 3.7(a)(ii).

(b) Purchaser and Purchaser's accountants shall, within 60 days after the delivery by Seller of the Closing Balance Sheet, complete their review of Net Worth as derived from the Closing Balance Sheet. In the event that Purchaser determines that Net Worth as derived from the Closing Balance Sheet, has not been determined on the basis set forth in Schedule 3.7(a)(ii), Purchaser shall inform Seller in writing (the "Purchaser's Objection"), setting forth a specific description of the basis of Purchaser's Objection and the adjustments to Net Worth which Purchaser believes should be made, on or before the last day of such 60-day period. Seller shall then have 30 days to review and respond to Purchaser's Objection. If Seller and Purchaser are unable to resolve all of their disagreements with respect to the determination of the foregoing items within 10 days following the completion of Seller's review of Purchaser's Objection, they shall refer their remaining differences to KPMG Peat Marwick or another internationally recognized firm of independent public accountants as to which Seller and Purchaser mutually agree (the "CPA Firm"), who shall, acting as experts and not as arbitrators,

determine on the basis of the standard set forth in Schedules 2.6 and 3.7(a)(ii), and only with respect to the remaining differences so submitted, whether and to what extent, if any, Net Worth as derived from the Closing Balance Sheet, requires adjustment. The CPA Firm's determination shall be conclusive and binding upon Purchaser and Seller. The fees and disbursements of the CPA Firm shall be shared equally by Purchaser and Seller. Purchaser and Seller shall make readily available to the CPA Firm all relevant books and records and any work papers (including those of the parties' respective accountants) relating to the Balance Sheet and the Closing Balance Sheet and all other items reasonably requested by the CPA Firm. The "Adjusted Closing Balance Sheet" shall be (i) the Closing Balance Sheet in the event that (x) no Purchaser's Objection is delivered to Seller during the 60-day period specified above, or (y) Seller and Purchaser so agree, (ii) the Closing Balance Sheet, adjusted in accordance with the Purchaser's Objection in the event that Seller does not respond to Purchaser's Objection within the 30-day period following receipt by Seller of Purchaser's Objection, or (iii) the Closing Balance Sheet, as adjusted by either (x) the agreement of Seller and Purchaser or (y) the CPA Firm.

(c) Purchaser shall provide Seller and its accountants full access to the Books and Records, any other

information, including work papers of its accountants, and to any employees to the extent necessary for Seller to prepare the Closing Balance Sheet. Purchaser and its accountants shall have the opportunity to observe the taking of the Inventory of the Business (which may begin prior to the Closing Date) in connection with the preparation of the Closing Balance Sheet and shall have full access to all information used by Seller in preparing the Closing Balance Sheet, including the work papers of its accountants.

(d) Within 10 Business Days following issuance of the Adjusted Closing Balance Sheet, the adjustment payments payable pursuant to this Section 2.6(d) shall be paid by wire transfer of immediately available funds to a bank account designated by Purchaser or Seller, as the case may be. Purchaser or Seller, as the case may be, shall make an adjustment payment in an amount equal to the difference between (x) the Base Amount and (y) Net Worth as derived from the Adjusted Closing Balance Sheet. The adjustment payment will be made by Seller to Purchaser to the extent that the Net Worth as derived from the Adjusted Closing Balance Sheet is less than the Base Amount and by Purchaser to Seller to the extent that Net Worth as derived from the Adjusted Closing Balance Sheet is greater than the Base Amount plus, in either case, interest thereon from the Closing Date through the date of payment at the rate of interest publicly announced by Citibank, N.A. or any

successor thereto in New York, New York from time to time as its "base rate".

(e) The short period reserve as reflected in Accrued Expenses in the Adjusted Closing Balance Sheet shall be allocated into categories of specified and non-specified items with respect to liabilities arising from incidents that occurred on or before December 31, 1993; provided, however that the amount of such non-specified items at Closing shall not be less than the aggregate amount of non-specified items included in the Reserve Schedule and such specified items shall be itemized in accordance with GAAP and in reasonable detail.

Section 2.7 The Closing.

(a) The Closing shall take place at the offices of Sullivan & Cromwell, 125 Broad Street, New York, New York 10004 at 10:00 A.M., New York City time, on the fifth Business Day following the satisfaction or waiver of all conditions precedent set forth in Article VI, or at such other time and place as the parties hereto may mutually agree. The date on which the Closing occurs is called the "Closing Date". If the parties so agree, the Closing for the purchase and sale of any Transferred Assets comprising the Business in any jurisdiction other than the United States may be held in the country in which such Transferred Assets are located or elsewhere. Any portion of the Purchase Price allocated otherwise than to Seller shall be

payable to such entity as shall be reasonably determined by Purchaser to be necessary to comply with applicable Laws.

(b) Notwithstanding anything to the contrary contained in this Agreement, to the extent that the sale, assignment, transfer, conveyance or delivery or attempted sale, assignment, transfer, conveyance or delivery to Purchaser of any Transferred Asset is prohibited by any applicable Law or would require any governmental or third party authorizations, approvals, consents or waivers and such authorizations, approvals, consents or waivers shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, assignment, transfer, conveyance or delivery, or any attempted sale, assignment, transfer, conveyance or delivery, thereof. Following the Closing, the parties shall use reasonable efforts and shall cooperate with each other, to obtain promptly such authorizations, approvals, consents or waivers; provided, however, that none of Seller, Sterling, Kodak, Purchaser or the Affiliates of any of them shall be required to pay any consideration therefor, other than filing, recordation or similar fees payable to any governmental authority, which fees (other than to the extent relating to the L&F Transfer) shall be shared equally by Purchaser and Seller. Pending such authorization, approval, consent or waiver, the parties shall cooperate with each other in any reasonable and lawful arrangements designed to provide to Purchaser the benefits

and liabilities of use of such Transferred Asset. Once such authorization, approval, consent or waiver for the sale, assignment, transfer, conveyance or delivery of a Transferred Asset not sold, assigned, transferred, conveyed or delivered at the Closing is obtained, Seller, Kodak, Sterling, or such other Affiliate of Kodak, as the case may be, shall promptly assign, transfer, convey and deliver, or cause to be assigned, transferred, conveyed and delivered, such Transferred Asset to Purchaser for no additional consideration. To the extent that any such Transferred Asset cannot be transferred or the full benefits and liabilities of use of any such Transferred Asset cannot be provided to Purchaser following the Closing pursuant to this Section 2.7(b), then Purchaser, Seller, Sterling (to the extent provided in the Sterling Stock Purchase Agreement assuming that Kodak indemnifies Sterling against any associated Losses) and Kodak shall enter into such arrangements (including subleasing or subcontracting if permitted) to provide to Purchaser the economic (taking into account Tax costs and benefits) and operational equivalent of obtaining such authorization, approval, consent or waiver and the performance by Purchaser of the obligations thereunder.

Section 2.8 Deliveries by Purchaser and Its Affiliates At the Closing. Purchaser and its Affiliates shall deliver to Seller, and with respect to Sections

2.8(a), 2.8(b) and 2.8(c) as applicable, to Kodak or its Affiliates, the following:

(a) the Purchase Price in immediately available funds by wire transfer to an account or accounts designated by Seller not less than two Business Days prior to the Closing;

(b) such instruments of assumption and other instruments or documents, in form and substance reasonably acceptable to Seller and Kodak, as may be necessary to effect Purchaser's assumption of the Assumed Liabilities;

(c) such other instruments and documents, in form and substance reasonably acceptable to Seller and Kodak, as may be necessary to effect the Closing;

(d) a duly executed copy of each of the Ancillary Agreements; and

(e) the certificates and other documents to be delivered pursuant to Section 6.3 hereof.

Section 2.9 Deliveries by Seller, Sterling, Kodak and Kodak's Affiliates At the Closing. At the Closing, Seller, and, as applicable, Sterling, Kodak and Kodak's Affiliates shall deliver to Purchaser or its Affiliates the following:

(a) bills of sale or other documents or instruments of transfer in proper form to effect the transfer of Transferred Assets in the jurisdiction in which such Transferred Assets are located, and in each case in form and

substance reasonably acceptable to Purchaser, transferring to Purchaser all tangible personal property included in the Transferred Assets;

(b) certificates evidencing all outstanding capital stock or other equity or participation interests of the Transferred Subsidiaries in proper form for transfer to Purchaser or its Affiliates with all requisite stock transfer stamps attached;

(c) assignments, in form and substance acceptable to Purchaser, assigning to Purchaser all Intellectual Property included in the Transferred Assets;

(d) deeds, in form and substance reasonably acceptable to Purchaser, transferring all Owned Real Property to Purchaser free and clear of all Encumbrances, subject only to any and all Permitted Encumbrances (each of such deeds to constitute a bargain and sale deed or equivalent deed in the applicable jurisdiction, in proper statutory short form for recording);

(e) assignments or, where necessary, subleases, in form and substance reasonably acceptable to Purchaser, assigning or subleasing to Purchaser all Leased Real Property free and clear of all Encumbrances and, where necessary, the consent of each landlord to such assignment under any of the leases for the Leased Real Property;

(f) such other instruments or documents, in form and substance reasonably acceptable to Purchaser, as may be

necessary to effect the Closing or evidence the transactions contemplated hereby;

(g) a duly executed copy of each of the Ancillary Agreements;

(h) the certificates and other documents to be delivered pursuant to Section 6.2 hereof;

(i) a copy of resolutions of the board of directors of each of Kodak, Sterling and Seller authorizing the execution, delivery and performance, respectively, of this Agreement and the Ancillary Agreements and a certificate of its respective secretary or assistant secretary, dated as of the Closing Date, to the effect that such resolutions were duly adopted, have not been amended and are in full force and effect; and

(j) to the extent requested by Purchaser, resignations of the directors of each of the Transferred Subsidiaries from their positions as directors.

Section 2.10 Means of Transfer.

The parties acknowledge that, notwithstanding whether a transfer of assets and liabilities occurs by transferring an equity interest in an entity or the assets held by such entity, or any other means agreed to by the parties, the transfer shall be structured in a manner that gives effect to the definitions of Transferred Assets (other than Section 2.1(g)), Excluded Assets, Assumed Liabilities and Excluded Liabilities. The foregoing shall include,

without limitation, the right of Seller to remove or cause to be removed any Excluded Asset (and any associated liability) from an entity constituting a Transferred Subsidiary prior to transferring such entity. The Transferred Assets and Assumed Liabilities shall be transferred in the form (i.e., a transfer of assets and liabilities held by an entity or a transfer of equity interests in such entity) set forth on Schedule 2.10.

Section 2.11 Additional Payments. On the date of any transfer of assets from a Seller Retirement Plan to a Transferee Pension Plan, Seller shall pay to Purchaser the Pension Shortfall Amount, if applicable.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER, STERLING AND KODAK

Seller, Sterling and Kodak, jointly and severally, represent and warrant to Purchaser as follows:

Section 3.1 Organization and Qualification.

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to own, lease and operate the Transferred Assets and to carry on the Business as currently conducted. Except as set forth on Schedule 3.1(a), Seller is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership, leasing or operation of the Transferred Assets or

the conduct of the Business requires such qualification, except where the failure to be so qualified or in good standing, as the case may be, would not have a Material Adverse Effect.

(b) Sterling is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation.

(c) Kodak is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation.

Section 3.2 Subsidiaries.

(a) Schedule 3.2(a)(i) sets forth a list of each Subsidiary that is engaged, in whole or in part, in the Business, together with its jurisdiction of organization and its authorized and outstanding capital stock or other equity interests as of the date hereof. The Subsidiaries are the only Affiliates of Kodak (other than Seller) through which the Business is conducted on the date hereof. Except as set forth on Schedule 3.2(a)(ii), each such entity is a corporation or other entity duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is duly qualified to do business and is in good standing as a foreign corporation or other entity

in each jurisdiction where the ownership, leasing or operation of its properties and assets or the conduct of its business requires such qualification, except where the failure to be so duly organized, validly existing, qualified or in good standing would not have a Material Adverse Effect.

(b) Except as set forth on Schedule 3.2(b), Seller beneficially owns, directly or indirectly, all of the outstanding capital stock or other equity interest of each such entity free and clear of all Encumbrances. There are no preemptive or other outstanding rights, options, warrants, conversion rights or agreements or commitments to issue or sell any shares of capital stock or other equity interest of any such entity or any securities or obligations convertible into or exchangeable for, or giving any Person a right to subscribe for or acquire, any shares of capital stock or other equity interest of any such entity, and no securities or obligations evidencing such rights are outstanding.

Section 3.3 Corporate Authorization. Each of Seller, Sterling and Kodak has, and as of the Closing Date each Affiliate of Kodak that transfers Transferred Assets (each such Affiliate, a "Kodak Affiliated Transferor") will have, full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements, and to perform their obligations hereunder and thereunder.

The execution, delivery and performance by Seller, Sterling, Kodak and each Kodak Affiliated Transferor of this Agreement and each of the Ancillary Agreements have been (or in the case of each Kodak Affiliated Transferor as of the Closing Date will have been) duly and validly authorized and no additional corporate authorization or consent is (or in the case of each Kodak Affiliated Transferor as of the Closing Date will be) required in connection with the execution, delivery and performance by Seller, Sterling, Kodak and each Kodak Affiliated Transferor of this Agreement and each of the Ancillary Agreements.

Section 3.4 Consents and Approvals. Except (i) as specifically set forth in Schedule 3.4, (ii) for registrations to be effected after the Closing Date in accordance with Section 5.10 or (iii) as required by U.S. Antitrust Laws, European Union Competition Law (or the Competition Law of France, Germany, Italy, Spain or the United Kingdom, in each case to the extent not subject to European Union jurisdiction), the Competition Laws of Australia, Canada or Japan, or the Exchange Act, no consent, approval, waiver, registration or authorization is required to be obtained by Seller, Sterling, Kodak or any Kodak Affiliated Transferor from, and no notice or filing is required to be given by Seller, Sterling, Kodak or any Kodak Affiliated Transferor to or made by Seller, Sterling, Kodak or any Kodak Affiliated Transferor with, any Federal, state,

local or other governmental authority or other Person in connection with the execution, delivery and performance by Seller, Sterling, Kodak or any Kodak Affiliated Transferor of this Agreement and each of the Ancillary Agreements, other than in all cases where the failure to obtain such consent, approval, waiver, registration or authorization, or to give or make such notice of filing would not have a Material Adverse Effect or materially impair or delay the ability of Seller, Sterling, Kodak and any Kodak Affiliated Transferor to effect the Closing.

Section 3.5 Non-Contravention. Except as set forth on Schedule 3.5, the execution, delivery and performance by Seller, Sterling, Kodak and any Kodak Affiliated Transferor of this Agreement and each of the Ancillary Agreements, and the consummation of the transactions contemplated hereby and thereby, does not and will not (i) violate any provision of the charter, bylaws or other organizational documents of Seller, Sterling, Kodak or any Kodak Affiliated Transferor, (ii) subject to obtaining the consents referred to in Section 3.4, conflict with, or result in the breach of, or constitute a default under, or result in the termination, cancellation or acceleration (whether after the filing of notice or the lapse of time or both) of any right or obligation of Seller, Sterling, Kodak or any Kodak Affiliated Transferor under, or to a loss of any benefit to which Seller, Sterling, Kodak or any Kodak

Affiliated Transferor is entitled under, (A) the Sterling Stock Purchase Agreement or the agreement for the disposition of the Ethical Business, or (B) any other contract, agreement or other instrument to which it is a party (including, without limitation, the Contracts) or result in the creation of any Encumbrance upon the Transferred Asset), or (iii) assuming compliance with the matters set forth in Sections 3.4 and 4.3, violate or result in a breach of or constitute a default under any Laws or other restriction of any court or governmental authority to which Seller, Sterling, Kodak or any Kodak Affiliated Transferor is subject, including any Governmental Authorization, other than in the cases of clauses (ii)(B) and (iii), any conflict, breach, termination, default, cancellation, acceleration, loss, violation or Encumbrance which, individually or in the aggregate, would not have a Material Adverse Effect or materially impair or delay Seller's, Sterling's, Kodak's or any Kodak Affiliated Transferor's ability to convey the Transferred Assets or otherwise perform its obligations hereunder. The agreements to which Seller and Kodak become parties relating to the disposition of the DIY Business will not, assuming Purchaser's compliance with its covenants and obligations under this Agreement, conflict with, or result in the breach of, or result in the loss of any benefit to which Purchaser is entitled under, this Agreement.

Section 3.6 Binding Effect. This Agreement constitutes, and each of the Ancillary Agreements when executed and delivered by the parties thereto will constitute, a valid and legally binding obligation of each of Seller, Sterling and Kodak enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

Section 3.7 Financial Statements.

(a) The Balance Sheet and the unaudited pro forma statements of earnings from operations of the Business for the year ended December 31, 1993 and the six months ended June 30, 1994 attached as Schedule 3.7(a)(i) (together, the "Financial Statements") fairly present, in accordance with GAAP as modified as described in Schedule 3.7(a)(ii), the financial condition of the Business as of the date thereof, or the results of operations for the respective periods then ended, as the case may be.

(b) All of the assets and liabilities reflected on the Balance Sheet are Related to the Business and arose out of or were incurred in bona fide transactions in the conduct of the Business.

(c) Since December 31, 1993, there has been no Material Adverse Change.

(d) Since January 1, 1994, there have been no material changes in promotional allowances or credit terms relating to Current Products that have been sold by the Business since such date.

Section 3.8 Litigation and Claims.

(a) Except as set forth in Schedule 3.8(a), there is no civil, criminal or administrative action, suit, demand, claim, hearing, proceeding or investigation (or series of actions, suits, demands, claims, hearings, proceedings or investigations based on the same or similar facts or allegations of fact) (collectively, "Proceedings") pending or, to the Knowledge of Seller, Sterling, or Kodak, threatened, involving the Business or any of the Transferred Assets and Seller, Sterling and Kodak have no Knowledge of any basis for any such Proceeding, other than those which, individually or in the aggregate, would not have a Material Adverse Effect or materially impair or delay the ability of Seller, Sterling, Kodak or any Kodak Affiliated Transferor to effect the Closing.

(b) Except as set forth in Schedule 3.8(b), none of the Transferred Assets is subject to any order, writ, judgment, ruling, award, injunction, or decree of any court or governmental or regulatory authority of competent jurisdiction or any arbitrator or arbitrators other than those which, individually or in the aggregate, would not have a Material Adverse Effect or materially impair or delay

the ability of Seller, Sterling, Kodak or any Kodak Affiliated Transferor to effect the Closing.

Section 3.9 Taxes. With respect to the Business, except as set forth in Schedule 3.9:

(a) All Tax Returns that are required to be filed on or before the date of this Agreement (taking into account applicable extensions) by or with respect to Sterling, Seller and the Subsidiaries, have been duly filed, except for Tax Returns the failure to file which, when taken together with all other such failures, will not have a Material Adverse Effect and all such Tax Returns are true and complete in all material respects; (b) all Taxes that are due with respect to the periods covered by the Tax Returns referred to in clause (a) have been timely paid or recorded as reserves or current liabilities on the Balance Sheet with respect to periods ending on or prior to December 31, 1993, and in the Books and Records for periods commencing after December 31, 1993, except for such Taxes as to which the failure to pay or record, when taken together with all other such failures, will not have a Material Adverse Effect; (c) no adjustments relating to the Tax Returns referred to in clause (a) have been proposed in writing by the Internal Revenue Service or the appropriate state, local or foreign taxing authority, other than those adjustments which individually or in the aggregate would not result in Losses of $1,000,000 or more; (d) there are no

pending or, to the Knowledge of Seller, threatened actions or proceedings for the assessment or collection of Taxes against any entity described in clause (a) as of the date of this Agreement, other than those actions or proceedings which individually or in the aggregate would not result in Losses of $1,000,000 or more; (e) there are no outstanding waivers or agreements extending the applicable statute of limitations for any period with respect to any Taxes of any entity described in clause (a) as of the date of this Agreement, other than those waivers or agreements which individually or in the aggregate would not result in Losses of $1,000,000 or more; (f) no taxing authorities are presently conducting any audits or other examinations of any Tax Returns referred to in clause (a), other than those audits or examinations which individually or in the aggregate would not result in Losses of $1,000,000 or more; (g) no closing agreement pursuant to Section 7121 of the Code (or any predecessor provision) or any similar provision of any state, local, or foreign Law has been entered into by or with respect to any Transferred Subsidiary or any Transferred Asset; (h) the Seller has previously made available to the Purchaser true and complete copies of each of (i) any written audit reports issued by any taxing authority within the last two years relating to the United States Federal, state, local or foreign Taxes due from or with respect to the Business or the Transferred Subsidiaries

and (ii) the United States federal, state, local, and foreign Tax Returns, for each of the last two taxable years, filed by each of Sterling and the Subsidiaries or (insofar as such returns relate to the Business or any Transferred Subsidiary) filed by any affiliated, consolidated, combined, or unitary group of which Sterling or any Subsidiary or any of their respective Affiliates was then a member; (i) none of the Transferred Assets or the Assets of any Transferred Subsidiary is an asset or property that is, as of the date of this Agreement, or will be required to be, as a result of any action taken prior to Closing, treated as being (i) owned by any Person (other than the Purchaser or the Subsidiaries) pursuant to the provisions of Section 168(f)(8) of the Internal Revenue Code of 1954, as amended and in effect immediately before the enactment of the Tax Reform Act of 1986 (or any similar provision under state, local or foreign law) or (ii) tax-exempt use property within the meaning of Section 168(h)(i) of the Code (or any similar provision under state, local or foreign law) other than, with respect to both clause (i) and (ii), such treatment which individually or in the aggregate would not result in Losses of $1,000,000 or more; (j) at the Closing, neither Purchaser nor any Transferred Subsidiary will be a party to, be bound by, or have any obligation under any tax sharing agreement or similar contract or arrangement, except as specifically contemplated by this Agreement or as a result

of an action taken by the Purchaser; (k) no Transferred Subsidiary other than L&F Products International, Inc. is or has been subject to taxation for income Taxes or material other Taxes by any United States Federal, state or local government authority other than pursuant to Sections 951 through 964 and 1296 of the Code (and the equivalent local and state provisions); and (l) Seller and any Affiliate transferring Transferred Assets are either (i) not a foreign person within the meaning of Section 1445 of the Code or (ii) not subject to Tax under Section 897 of the Code with respect to the transfer of any Transferred Asset.

Section 3.10 Employee Benefits.

(a) Schedule 3.10(a) sets forth a list of all benefit plans, contracts, policies or arrangements covering U.S. Employees, including, but not limited to, "employee benefit plans" within the meaning of Section 3(3) of ERISA, bonus or other incentive compensation plans, leave of absence policies, relocation policies and plans of deferred compensation (the "Benefit Plans"). True and complete copies of all Benefit Plans, including, but not limited to, any trust instruments and insurance contracts forming a part of any Benefit Plans, and all amendments thereto, and the most recent summary plan descriptions related thereto, have been provided to Purchaser. For this purpose, all documents located in the Household Products Group on September 9, 1994

and set forth on the Data Room Index dated September 1, 1994 shall be deemed to have been provided.

(b) The Benefit Plans, to the extent subject to ERISA, are in substantial compliance with ERISA. Each Benefit Plan which is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA ("Pension Plan") and which is intended to be qualified under Section 401(a) of the Code, has received a favorable determination letter from the Internal Revenue Service, and to the Knowledge of Seller, Sterling or Kodak there are no circumstances likely to result in any failure of any such plans to be so qualified. Except as set forth in Schedule 3.10(b), there is no pending or, to the Knowledge of Seller, Sterling or Kodak, threatened Proceeding relating to the Benefit Plans, other than those which, individually or in the aggregate, would not result in Losses of $1 million or more. Neither Seller nor any of its Subsidiaries has engaged in a transaction with respect to any Benefit Plan that could subject Seller or any such Subsidiary to a tax or penalty imposed under either Section 4975 of the Code or Section 502(i) of ERISA other than those which, individually or in the aggregate, would not result in taxes or penalties of $1 million or more.

(c) No liability under Subtitle C or D of Title IV of ERISA has been or is expected to be incurred by Seller or any of its Subsidiaries with respect to any

ongoing, frozen or terminated "single-employer plan", within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by any of them, or any such plan with respect to any entity which is considered one employer with Seller under Section 4001 of ERISA or Section 414 of the Code (an "ERISA Affiliate"). Seller, Sterling and their Subsidiaries have not incurred any withdrawal liability with respect to a multiemployer plan under Subtitle E of Title IV of ERISA and do not have any obligation to contribute to a multiemployer plan. No notice of a "reportable event", within the meaning of Section 4043 of ERISA for which the 30-day reporting requirement has not been waived, has been required to be filed for any Pension Plan or by any ERISA Affiliate within the 12-month period ending on the date hereof.

(d) Neither any Pension Plan nor any single-employer plan of an ERISA Affiliate has an "accumulated funding deficiency" (whether or not waived) within the meaning of Section 412 of the Code or Section 302 of ERISA, and no ERISA Affiliate has an outstanding funding waiver. Neither Seller nor any of its Subsidiaries has provided, or is required to provide, security to any Pension Plan or to any single-employer plan of an ERISA Affiliate pursuant to Section 401(a)(29) of the Code.

(e) Except as set forth in Schedule 3.10(e), neither Seller nor any of its Subsidiaries has any

obligations for retiree health, life or other welfare benefits under any Benefit Plan.

(f) All benefit plans, contracts or arrangements covering non-U.S. Employees ("Non-U.S. Benefit Plans") comply in all material respects with applicable local Law. Schedule 3.10(f) sets forth a list of all Non-U.S. Benefit Plans covering more than 25 non-U.S. Employees. Except as set forth in Schedule 3.10(f), Seller and its Subsidiaries have no unfunded liabilities with respect to any "employee pension benefit plan" within the meaning of Section 3(2) of ERISA which covers non-U.S. Employees of $1,000,000 or more. The information relating to the Non-U.S. Benefit Plans provided (as determined in a manner similar to that of Section 3.10(a)) is correct in all material respects.

(g) Any Active or Inactive Employee who accepts employment with Purchaser will not be entitled to any severance under the L&F Products Severance Plan.

Section 3.11 Compliance with Laws. Except as set forth in Schedule 3.11, the Business is being conducted in compliance with all applicable Laws and the Business has all Governmental Authorizations necessary for the conduct of the Business as currently conducted, other than any such noncompliance or lack of Governmental Authorization the absence of which would not have a Material Adverse Effect; it being understood that nothing in this representation is

intended to address any compliance issue that is the subject of any other representation or warranty set forth herein.

Section 3.12 Environmental Matters. Except as set forth in Schedule 3.12 and, in each case, other than as relates to an Excluded Liability:

(a) the Business is in compliance with all applicable Environmental Laws and there are no liabilities under any Environmental Law with respect to the Business, other than liabilities for non-compliance or other liabilities which, individually or in the aggregate, would not have a Material Adverse Effect;

(b) None of Seller, Sterling or any of the Subsidiaries or Kodak Affiliated Transferors has received from any Governmental Authority any written notice of any violation or alleged violation of, or any liability under, any Environmental Law in connection with the Business since September 26, 1989, other than any violations or alleged violations which, individually or in the aggregate, would not have a Material Adverse Effect;

(c) there are no writs, injunctions, decrees, orders or judgments outstanding, or any Proceedings pending or, to the Knowledge of Seller, Sterling or Kodak, threatened, relating to compliance with or liability under any Environmental Law affecting the Business or the Transferred Assets;

(d) all Owned Real Property and Leased Real Property or property otherwise operated by Seller or its Subsidiaries in connection with the Business, and, to the Knowledge of Seller, Sterling and Kodak, all property adjacent to such properties, are free from contamination by any Hazardous Substance, which would have a Material Adverse Effect;

(e) neither the Seller, Sterling nor its Subsidiaries is conducting any Remedial Action arising from or in connection with the Business or the Transferred Assets which would have a Material Adverse Effect, and no facts or circumstances exist which could give rise to any Remedial Action with respect to Hazardous Substances which would have a Material Adverse Effect; and

(f) (i) Seller and its Subsidiaries currently maintain all Environmental Permits necessary for the operations of the Business and are in compliance with such Environmental Permits, except where the failure to obtain such Permits or such non-compliance would not have a Material Adverse Effect.

Section 3.13 Intellectual Property.

(a) Schedule 3.13(a) sets forth a list and description (including the country of registration) of (i) all patents, patent applications, registered trademarks, trademark applications, registered service marks, service mark applications, registered copyrights and copyright

applications included in the Transferred Assets and (ii) all agreements under which Seller, Sterling, Kodak or any Transferred Subsidiary or any Affiliate of any of them is licensed by a Person (excluding Seller, Sterling, Kodak or any Affiliate of any of them) to use any Intellectual Property that is individually or in the aggregate material to the Business, all of which are assignable to Purchaser and may be used and exploited by Purchaser to the same extent Currently used and exploited in the Business as Currently conducted without any required consent or other approval or additional consideration, except as set forth in Schedule 3.13(a). The Intellectual Property constitutes all of the intellectual property rights, including without limitation, all copyrights, trademarks, service marks, trade secrets, knowhow and patent rights used in, necessary for, or attributable to, the Business as Currently conducted. All of the Intellectual Property is valid, enforceable and subsisting and all reasonably necessary actions have been taken to maintain the registration of the patents, copyrights and trademarks.

(b) (i) Except as set forth in Schedule 3.13(b)(i) with respect to Intellectual Property other than trademarks, no product (or component thereof or process) used, sold or manufactured in connection with the Business infringes on or otherwise violates valid and enforceable patents or registered copyrights or, to the Knowledge of

Seller, Sterling and Kodak, unregistered or common law copyrights of any other Person, or, to the Knowledge of Seller, Sterling or Kodak, misappropriates trade secrets of any other Person, (ii) with respect to trademarks listed in Schedule 3.13(b)(ii) (the "Selected Marks") and except as set forth in Schedule 3.13(b)(i), there are no restrictions that would materially affect the use of the Selected Marks in connection with the Business and the Selected Marks do not infringe upon or otherwise violate the valid and registered trademarks of any other Person, and (iii) to the Knowledge of Seller, Sterling or Kodak, there is no basis for cancelling or rendering unenforceable any Intellectual Property and no Person is challenging or, to the Knowledge of Seller, Sterling or Kodak, infringing or otherwise violating the Intellectual Property. Except as set forth in Schedule 3.13(b)(i), the operation of the Business as it is Currently operated or has been operated does not infringe any valid and enforceable copyrights, trademarks, trade secrets, patent rights or other rights of any Person. Purchaser's operation of the Business as it is Currently operated and the use by Purchaser of the trademarks and service marks that are included in the Intellectual Property will not contravene, or be inconsistent with, any registered user certificate or similar filing or authorization.

Section 3.14 Labor Matters. (a) Except as set forth in Schedule 3.14, neither Seller, Sterling, Kodak nor

any Affiliate of any of them is a party to or bound by any labor agreement or collective bargaining agreement respecting the Active or Inactive Employees, nor is there pending, or, to the Knowledge of Seller, Sterling or Kodak, threatened, any strike, walkout, work stoppage, slow down, lock out, other labor dispute or any union organizing effort by or respecting the Active or Inactive Employees. Except as set forth in Schedule 3.14(a), no charges, grievances, arbitrations or complaints are pending or, to the Knowledge of Seller, Sterling or Kodak, threatened by or on behalf of any Employee or group of Employees.

(b) With respect to the Business, there has been no mass layoff, as defined for purposes of WARN and no plant closing, or any notice given of any contemplated mass layoff or plant closing, in each case since March 26, 1994.

Section 3.15 Contracts. Schedule 3.15(i) sets forth a list, as of the date hereof, of each written Contract that is Related to the Business (other than (i) purchase orders in the ordinary and usual course of business involving less than $250,000, (ii) any Contract involving the payment of less than $250;000 in the aggregate or with a term of less than one year, (iii) confidentiality agreements entered into in the usual course of business, (iv) employment agreements covering non-U.S. Employees (other than contracts with key non-U.S. Employees) and (v) trademark agreements not related to Selected Marks and

not containing restrictions on the use of Selected Marks). Schedule 3.15(i) does not omit any Contract (written or oral) that is material to the Business. Except as set forth in Schedule 3.15(ii), each Contract that is material to the Business as Currently conducted is a valid and binding agreement of Seller or a Subsidiary and is in full force and effect. Except as otherwise provided in Schedule 3.15(iii), none of Seller, Sterling or Kodak has Knowledge of any material default by the other party to or any event, occurrence or circumstance which, upon the passage of time or the giving of notice or both, would result in a material default under any Contract that is material to the Business as Currently conducted, which default or potential default has not been cured or waived.

Section 3.16 Entire Business; Shared Assets; Title to and Condition of Property.

(a) Except as set forth in Schedule 3.16(a), the Transferred Assets constitute, and the sale of the Transferred Assets pursuant to this Agreement will effectively convey to Purchaser, all the assets, properties and rights that are used in connection with, or are necessary to conduct, the Business as currently conducted. Except as set forth on Schedule 3.16(a), there are no (i) shared facilities that are used in connection with the Business and with other operations of Seller, Sterling, Kodak, Kodak's other Affiliates (including, without

limitation, the DIY Business) or the purchasers of the Ethical and OTC Businesses or (ii) services provided to the Business by Seller, Sterling, Kodak, any of Kodak's other Affiliates (including, without limitation, the DIY Business) or the purchasers of the Ethical and OTC Businesses.

(b) Schedule 3.16(b) sets forth a list of the Leased Real Property as of the date hereof. Schedule 3.16(b) sets forth a list of the Owned Real Property as of the date hereof. Seller has good (and in the case of Owned and Leased Real Property marketable) title to, or a valid and binding leasehold interest in, the property included in the Transferred Assets, free and clear of all Encumbrances, except (i) as set forth in Schedule 3.16(b), (ii) any Encumbrances disclosed in the Balance Sheet, (iii) liens for Taxes, assessments and other governmental charges not yet due and payable or due but not delinquent or being contested in good faith by appropriate proceedings, (iv) original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business, (v) other liens incurred in the ordinary course of business which, individually or in the aggregate, do not secure liabilities of $1 million or more, (vi) with respect to real property, easements, quasi-easements, licenses, covenants, rights-of-way, zoning, building and other similar restrictions that are not material to the Business, or to the operations or condition of the property

so encumbered (all items included in (i) through (vi), together with any matter set forth in Schedule 3.16(b), are referred to collectively herein as the "Permitted Encumbrances").

(c) The leases described on Schedule 3.16(b) constitute all of the leases under which Seller holds a leasehold interest in real estate that is Related to the Business. Except as set forth on Schedule 3.16(b), the leases described on Schedule 3.16(b) are in full force and effect. Seller has made available to Purchaser complete and accurate copies of each of the leases described on Schedule 3.16(b) and none of such leases have been modified in any material respect, except to the extent that such modifications are disclosed by the copies made available to Purchaser.

(d) Seller has made available to Purchaser complete and accurate copies of all the title insurance policies and surveys in its or any of its Affiliates' possession with respect to each of the Owned Real Properties. Except as set forth on Schedule 3.16(d), the uses for which the Owned Real Property and the Leased Real Property are zoned do not restrict, or in any manner impair, the use thereof for purposes of the Business, as Currently conducted, other than restrictions which, individually or in the aggregate, would not materially impair the use of the

Owned Real Property and the Leased Real Property in the Business as Currently conducted.

(e) All of the material machinery, equipment and other tangible personal property and assets at or upon any of the Owned Real Property or Leased Real Property are in satisfactory condition for use in the ordinary course of the Business consistent with Sterling's past practice and Seller, Sterling or their Affiliates have performed regular maintenance on such machinery, equipment and other tangible personal property in accordance with Sterling's past practice (giving due account to the age and length of use of the same, ordinary wear and tear excepted).

(f) None of Seller, Sterling or Kodak has received any notice of any violation of any applicable zoning, building code or subdivision ordinance or other Laws, or requirements relating to the operation of the Owned Real Property or the Leased Real Property or any of the other Transferred Assets (including, without limitation, applicable occupational health and safety laws and regulations) or any condemnation, eminent domain or other Proceeding with respect to or any of the Transferred Assets, other than violations or requirements which, individually or in the aggregate, would not have a Material Adverse Effect. The representation in this Section 3.16(f) shall not pertain to Environmental Laws.

Section 3.17 Finders' Fees. Except for Goldman, Sachs & Co. and McKinsey and Co., whose fees will be paid by Seller, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Seller or any Affiliate of Seller who might be entitled to any fee or commission from Seller in connection with the transactions contemplated by this Agreement.

Section 3.18 Insurance. All material insurance policies or binders insuring the Transferred Assets or business liabilities with respect to the Business which are currently in effect are listed in Schedule 3.18, and true and complete copies thereof have been delivered or made available to Purchaser. With respect to the Business: (i) Seller and/or its Affiliates have paid all premiums due and have not received any notice of cancellation with respect to any insurance policy identified on Schedule 3.18; (ii) except as described on Schedule 3.18(a), there are no pending or asserted material claims against such insurance by the Seller or its Affiliates as to which the insurers have denied liability; and (iii) there exist no material claims under such insurance that have not been properly filed by Seller or its Affiliates.

Section 3.19 Absence of Undisclosed Liabilities. There is no indebtedness, obligation or liability Related to the Business of a nature required to be reflected on a

balance sheet prepared in accordance with GAAP as modified as described in Schedule 3.7(a)(ii) except for (i) liabilities reflected or reserved for in the Balance Sheet (including Schedule 3.7(a)(ii)), (ii) Excluded Liabilities and (iii) liabilities or obligations incurred in the ordinary course (A) from the date of the Balance Sheet until the date hereof, consistent with past practice, or (B) from and after the date hereof as permitted by this Agreement.

Section 3.20 Intercompany Transactions. Except as disclosed in Schedule 3.20, since December 31, 1993, all transactions between Kodak or any of its Affiliates, on the one hand, and Seller or Sterling, on the other hand, with respect to the Business, including any such transactions effected in anticipation of the execution, delivery and performance of this Agreement but excluding any such transactions relating solely to Excluded Assets or to the L&F Transfer have been undertaken on commercially reasonable terms. The receivables and payables relating to non-U.S. intercompany transactions as disclosed on the Adjusted Closing Balance Sheet will have arisen not more than 30 days prior to the Closing Date and will be settled within 30 days following the Closing Date.

Section 3.21 Customers and Suppliers. To the Knowledge of Seller, Sterling and Kodak as of the date hereof, no material customer or supplier of the Business

will cease or substantially reduce the business conducted with the Purchaser after, or as a result of, the consummation of any transaction contemplated hereby.

Section 3.22 Certain Documents. Seller has made available to Purchaser complete and accurate copies (i) of all minute books or comparable corporate records of the Transferred Subsidiaries, and (ii) all provisions of the Sterling Stock Purchase Agreement, and of any agreement entered into by Kodak, Seller, Sterling or any of their Affiliates in connection with the Sterling Stock Purchase Agreement or the dispositions of the Ethical and OTC Businesses that restrict or relate in any manner to (A) the L&F Transfer, (B) any assets or services of the L&F Products Division that were used by or related to the Business, on the one hand, and the DIY Business or the Ethical and OTC Businesses, on the other hand, (C) obligations of the purchaser of the Business to the purchaser or purchasers of Sterling, the DIY Business or the Ethical and OTC Businesses, or (D) obligations of the purchaser or purchasers of the DIY Business or Sterling's Ethical and OTC Businesses to the Purchaser of the Business.

Section 3.23 No Other Representations or Warranties. Except for the representations and warranties contained in this Article III, none of Seller, Sterling, Kodak nor any other Person makes any other express or

implied representation or warranty on behalf of Seller, Sterling or Kodak.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller, Sterling and Kodak as follows:

Section 4.1 Organization and Qualification. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to own, lease and operate and to carry on its business as currently conducted. Except as set forth on Schedule 4.1, Purchaser is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or leasing of its properties or the operation of its business requires such qualification, except where the failure to be so qualified or in good standing, as the case may be, would not have a Material Adverse Effect.

Section 4.2 Corporate Authorization. Purchaser has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements, and to perform their obligations hereunder and thereunder. The execution, delivery and performance by Purchaser of this Agreement and each of the Ancillary Agreements have been duly and validly authorized and no additional corporate

authorization or consent is required in connection with the execution, delivery and performance by Purchaser of this Agreement and each of the Ancillary Agreements, other than approval of this Agreement and the transactions contemplated hereby by the shareholders of Purchaser in accordance with the requirements of the London Stock Exchange.

Section 4.3 Consents and Approvals. Except as specifically set forth in Schedule 4.3 or as required by U.S. Antitrust Laws, European Union Competition Law (or the Competition Law of France, Germany, Italy, Spain or the United Kingdom, in each case to the extent not subject to European Union jurisdiction), the Competition Laws of Australia, Canada or Japan, or the rules and regulations of the London Stock Exchange, no consent, approval, waiver or authorization is required to be obtained by Purchaser or any Purchaser Subsidiary from, and no notice or filing is required to be given by Purchaser or any Purchaser Subsidiary to or made by Purchaser or any Purchaser Subsidiary with, any Federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by Purchaser of this Agreement and each of the Ancillary Agreements, other than in all cases those the failure of which to obtain, give or make would not have a Material Adverse Effect or materially impair or delay the ability of Purchaser to effect the Closing.

Section 4.4 Non-Contravention. Except as set forth in Schedule 4.4, the execution, delivery and performance by Purchaser of this Agreement and each of the Ancillary Agreements, and the consummation of the transactions contemplated hereby and thereby, does not and will not (i) violate any provision of the charter, bylaws or other organizational documents of Purchaser or (ii) assuming compliance with the matters set forth in Sections 3.4 and 4.3, to the Knowledge of Purchaser, violate or result in a breach of or constitute a default under any law, rule, regulation, judgment, injunction, order, decree or other restriction of any court or governmental authority to which Purchaser is subject, including any Governmental Authorization, other than any conflict, breach, termination, default, cancellation, acceleration, loss, violation or Encumbrance which, individually or in the aggregate, would not have a Material Adverse Effect or materially impair or delay Purchaser's ability to perform its obligations hereunder.

Section 4.5 Binding Effect. This Agreement constitutes, and each of the Ancillary Agreements when executed and delivered by the parties thereto will constitute, a valid and legally binding obligation of Purchaser enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or

affecting creditors' rights and to general equity principles.

Section 4.6 Finders' Fees. Except for S.G. Warburg & Co. Ltd., whose fees will be paid by Purchaser, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Purchaser or any Affiliate of Purchaser who might be entitled to any fee or commission from Purchaser in connection with the transactions contemplated by this Agreement.

Section 4.7 Financial Capability. On the Closing Date, Purchaser will have sufficient funds to effect the Closing and all other transactions contemplated by this Agreement.

Section 4.8 No Other Representations or Warranties. Except for the representations and warranties contained in this Article IV, neither Purchaser nor any other Person makes any other express or implied representation or warranty on behalf of Purchaser.

ARTICLE V

COVENANTS

Section 5.1 Access. Prior to the Closing, Seller shall, during regular business hours and upon reasonable advance notice, permit Purchaser and its representatives to have full access to the Transferred Assets and Business and reasonable access to management employees of the Business

and shall furnish, or cause to be furnished, to Purchaser, any financial and operating data and other information that is available with respect to the Business as Purchaser shall from time to time reasonably request. Seller shall instruct its accountants and advisers to cooperate with Purchaser and to provide Purchaser with reasonable access to such accountants (including their workpapers) and advisers. Seller shall also afford Purchaser and its advisers access to all documents and instruments used to effect the L&F Transfer.

Section 5.2 Conduct of Business. During the period from the date hereof to the Closing, except as otherwise contemplated by this Agreement or as Purchaser shall otherwise agree in writing in advance, each of Seller, Sterling and Kodak, as applicable, covenants and agrees that it shall, and shall cause the Subsidiaries to, conduct the Business in the ordinary and usual course, and use its reasonable efforts to preserve intact the Business and relationships with third parties. During the period from the date hereof to the Closing, except as otherwise provided for in this Agreement or as Purchaser shall otherwise consent (which consent shall not be unreasonably withheld), each of Seller, Sterling and Kodak, as applicable covenants and agrees that, with respect to the Business, it shall and shall cause the Subsidiaries to:

(i) maintain the Owned Real Property and Leased Real Property in accordance with Sterling's past practice;

(ii) not approve any new capital expenditure or other financial commitment in excess of $1,000,000;

(iii) not dispose of or incur, create or assume any Encumbrance, other than Permitted Encumbrances, on any individual capital asset of the Business if the greater of the book value and the fair market value of such capital asset exceeds $1,000,000;

(iv) not incur any indebtedness for money borrowed that constitutes an Assumed Liability in excess of $1,000,000;

(v) not permit any Transferred Subsidiary to (1) amend its certificate of incorporation or by-laws (or similar governing instruments), (2) except as permitted pursuant to clause (iv) above, issue, sell, redeem or otherwise acquire any capital stock, bonds, debentures, notes or other securities or grant any options (including employee stock options), warrants or other rights entitling any Person to require the issuance of delivery of any capital stock, bonds, debentures, notes or other securities, or (3) declare, or set aside for payment, any dividend to be paid subsequent to the Closing Date;

(vi) not enter into any material transaction or any intercompany transaction other than on commercially reasonable terms;

(vii) not grant material salary or wage increases, or change or amend any Benefit Plan covering Employees in any way that materially changes the amount of the Assumed Liability in respect of such plan;

(viii) not terminate, cancel, surrender, amend or otherwise modify any of the leases for the Leased Real Property;

(ix) not sell, transfer, assign or otherwise convey or encumber (except for Permitted Encumbrances) any of the Owned Real Property; or

(x) agree, in writing or otherwise, to do any of the foregoing.

Notwithstanding the foregoing, (x) this Section 5.2 shall not restrict Seller's ability to make distributions of cash or short-term investments to holders of its capital stock; (y) subject to clauses (v) and (vi) above, this Section 5.2 shall not restrict the ability of any Subsidiary to make distributions of cash or short-term investments to the holders of its capital stock at any time prior to the Closing Date; and (z) this Section 5.2 shall not restrict the ability of Sterling or any Affiliate of Sterling to effect the L&F Transfer. Seller, Sterling and Kodak shall complete the L&F Transfer, to the extent reasonably practicable, prior to consummating the sale of the stock of Sterling pursuant to the Sterling Stock

Purchase Agreement unless Purchaser shall otherwise consent (such consent not to be unreasonably withheld).

Section 5.3 Reasonable Efforts; Good Faith.

(a) Seller and Purchaser will cooperate and use their respective reasonable efforts to fulfill the conditions precedent to the other party's obligations hereunder, including but not limited to, securing as promptly as practicable all consents, approvals, waivers and authorizations required in connection with the transactions contemplated hereby. Purchaser and Seller will promptly file documentary materials required by the HSR Act and any other U.S., European Union and other applicable Competition Laws and promptly file any additional information in order to satisfy any applicable requirements of such Competition Laws as soon as practicable after receipt of request thereof.

(b) Without limiting the provisions set forth in paragraph (a) above, Purchaser shall take or cause to be taken all reasonable actions necessary, proper or advisable to obtain any consent, waiver, approval or authorization relating to any Competition Law that is required for the consummation of the transactions contemplated by this Agreement. Purchaser's reasonable actions shall be deemed satisfied by the proffer by Purchaser of its willingness to accept an order providing for the divestiture by Purchaser of assets Relating to the Business (other than assets that

constitute the essence of the Business) or, in lieu thereof, substantially comparable assets of Purchaser, and an offer to "hold separate" such assets pending such divestiture (it being understood that Purchaser shall not be required to accept any order or make any "hold separate" offer if, as a result of such order or offer, Purchaser would not retain the exclusive right in the United States and the rest of the world to own, use and exploit the LYSOL trademark and service mark). In the event that Purchaser agrees with the appropriate regulatory authorities to divest or hold separate following the Closing any of the Transferred Assets, no adjustment shall be made to the Purchase Price.

(c) Purchaser shall convene an extraordinary general meeting of its shareholders as soon as practicable after the date hereof to consider approval of this Agreement and the transactions contemplated hereby. As promptly as practicable after the execution of this Agreement, Kodak shall use its reasonable efforts to cause to be prepared such financial statements of the Business and reports thereof as shall be required to be included in Purchaser's shareholder circular as agreed between Purchaser and the London Stock Exchange.

Section 5.4 Tax Matters.

(a) Proration of Taxes and Earnings and Profits. To the extent permitted by law or administrative practice, the taxable years of each Transferred Subsidiary shall end

on and include the Closing Date. Whenever it is necessary to determine the liability for Taxes or the earnings and profits for a portion of a taxable year or period that begins before and ends after the Closing Date, the determination of the Taxes or the earnings and profits for the portion of the year or period ending on, and the portion of the year or period beginning after, the Closing Date shall be determined by assuming that the taxable year or period ended on and included the Closing Date, except that exemptions, allowances or deductions that are calculated on an annual basis and annual property taxes shall be prorated on the basis of the number of days in the annual period elapsed through and including the Closing Date as compared with the number of days in the annual period elapsing after the Closing Date.

(b) Tax Returns. (i) Kodak shall prepare, or cause to be prepared, and file, or cause to be filed, when due all Tax Returns relating to Taxes imposed with respect to the Business for the taxable periods, or portions thereof, beginning before and ending before, on or after the Closing Date other than Tax Returns of any Transferred Subsidiary and its subsidiaries which are not U.S. Federal consolidated or state or local combined or unitary returns and are due to be filed after the Closing Date. Kodak shall pay, or cause to be paid, when due all Taxes payable with respect to such returns and, except to the extent any such

Taxes are Assumed Liabilities, Kodak shall be liable for such Taxes. Kodak shall also prepare, or cause to be prepared, and file, or cause to be filed, when due all other Tax Returns with respect to the Business due before or on the Closing Date; Kodak shall pay, or cause to be paid, when due any Taxes payable with respect to such returns and except to the extent any such Taxes are Assumed Liabilities, Kodak shall be liable for such Taxes.

(ii) Purchaser shall prepare, or cause to be prepared, and file, or cause to be filed, when due Tax Returns of any Transferred Subsidiaries and its subsidiaries due to be filed after the Closing (other than U.S. Federal consolidated or state or local combined and unitary returns) and all other Tax Returns relating to Taxes imposed with respect to the Business for the taxable periods, or portions thereof, beginning after the Closing. Purchaser shall pay or cause to be paid, when due all Taxes payable with respect to such returns and, except to the extent any such Taxes are Excluded Liabilities, Purchaser shall be liable for such Taxes.

(iii) If either party (the "Payor") may be liable hereunder for any portion of the Taxes payable in connection with any Tax Return to be filed by the other party (the "Preparer"), the Preparer shall prepare and deliver to the Payor a copy of the relevant portions of such return, and any schedules, work papers and other documentation then

available that are relevant to the preparation of such portions of the Tax Return, not later than 45 days before the Due Date. The Preparer shall not file such return until the earlier of either the receipt of written notice from the Payor indicating the Payor's consent thereto, or the Due Date. The Payor's consent to the return as prepared by the Preparer may not be unreasonably withheld.

If the Payor objects to any items reflected on such returns, the Preparer and the Payor shall attempt to resolve the disagreement. If the Preparer and the Payor are unable to resolve the disagreement by 20 days before the Due Date, the dispute shall be referred to the CPA Firm whose determination shall be binding upon both parties.

(iv) If a dispute has not been resolved or the CPA Firm has not made its determination at least five (5) days prior to the earlier of the Due Date or the date payment is due, (1) each disputed item shall be reported on the return that is filed in accordance with the Preparer's position (modified to the extent necessary to incorporate any changes the parties have agreed upon), and (2) the Payor shall pay to the Preparer at least five (5) days prior to the earlier of the Due Date or the date payment is due the amount for which the Payor would be liable if the return was filed as instructed by the Payor (modified to the extent necessary to incorporate any changes the parties have agreed upon) (the "Payor's Amount"). When the amount of the

Payor's liability in respect of such Tax Return is finally determined, a settlement payment shall be made, in an amount equal to the difference between the amount finally determined to be due and the Payor's Amount, from the Payor to the Preparer if such amount is a positive number and from the Preparer to the Payor if such amount is a negative number.

(v) Except with respect to Tax Returns for which there is an on-going dispute governed by clause (iv), the Payor shall pay to the Preparer, at least five (5) days prior to the earlier of the Due Date or the date payment is due, the amount of Taxes reflected on such Tax Returns for which the Payor is liable hereunder (i.e., if the Payor is Kodak, the amount of such Taxes which constitute Excluded Liabilities, and if the Payor is Purchaser, the amount of such Taxes which constitute Assumed Liabilities.

(c) Information to be Provided by Purchaser.

(i) With respect to Tax Returns to be filed by Kodak pursuant to Section 5.4(b) hereof, Purchaser shall within 60 days following the end of the taxable year beginning before and ending on or after the Closing Date, prepare and provide to Kodak a package of tax information materials relating to such Tax Returns (the "Tax Package"), which shall be completed generally in accordance with past practice, including past practice as to providing the information, schedules and work papers and as to the method

of computation of separate taxable income or other relevant measures of income of Seller (and Sterling, as its predecessor with respect to the Business) and any Subsidiary included on any such returns.

(ii) Foreign Tax Receipts. To the extent not contained in the Tax Package, Purchaser shall deliver to the attention of the Director of Corporate Tax of Kodak certified copies of all receipts in the possession of Purchaser and its Affiliates for any foreign Tax with respect to which Seller, Sterling, Kodak or their Affiliates could claim a foreign tax credit, and any other reasonably necessary documentation required in connection with Seller, Sterling, Kodak or their Affiliates claiming or supporting a claim for such foreign tax credits promptly following a request by Kodak for such receipts or documentation. Purchaser agrees, upon request of the Director of Corporate Tax of Kodak, to request, at Seller's expense, for Kodak from local tax authorities receipts for foreign Taxes which have not been provided to Purchaser.

(d) Contest Provisions. (i) Notification of Contests. Each of Purchaser and its Affiliates, on the one hand, and Kodak, Seller and their Affiliates, on the other (the "Recipient"), shall notify the tax director of each other party in writing within 30 days of receipt by the Recipient of written notice of any pending or threatened audits, adjustments or assessments (a "Tax Audit") which may

affect the liability for Taxes of such other party. If the Recipient fails to give such prompt notice to the other party it shall not be entitled to indemnification for any Taxes arising in connection with such Tax Audit if such failure to give notice materially adversely affects Kodak's liability as a result of the outcome of the Tax Audit.

(ii) Which Party Controls. (A) Kodak and Seller's Items. If such Tax Audit relates to any period ending on or prior to the Closing (except with respect to Taxes constituting Assumed Liabilities) or for any Taxes for which Kodak or Seller is liable in full hereunder, Kodak shall at its expense control the defense and settlement of such Tax Audit.

(B) Purchaser's Items. If such Tax Audit relates to any period beginning after the Closing or for any Taxes for which Purchaser is liable in full hereunder, Purchaser shall at its expense control the defense and settlement of such Tax Audit.

(C) Combined and Mixed Items. If such Tax Audit relates to Taxes for which both Kodak or Seller, on the one hand, and Purchaser (including Taxes of Affiliates of Purchaser for any post-Closing periods), on the other, are liable hereunder, to the extent possible such Tax Items will be distinguished and each party will control the defense and settlement of those Taxes for which it is so liable.

If such Tax Audit relates to a taxable period, or portion thereof, beginning before and ending after the Closing and any Tax Item can not be identified as being a liability of only one party or cannot be separated from a Tax Item for which the other party is liable, the party which has the greater potential liability for those Tax Items that cannot be so attributed or separated (or both) shall control the defense and settlement of the Tax Audit, provided that such party defends the items as reported on the relevant Tax Return. In defending the item as reported on the relevant Tax Return, the party may negotiate any settlement that is reasonable provided that it does not increase the liability of the other party in an amount that is greater than such other party's pro rata share of those items and does not trade any item for which the other party has a greater liability for any item for which it has a lesser liability, unless it obtains the other's party consent thereto.

(D) Participation Rights. (i) Any party whose liability for Taxes may be affected by a Tax Audit shall be entitled to participate at its expense in such defense and to employ counsel of its choice at its expense.

(ii) If settlement of any Tax Audit could materially and adversely affect Purchaser and its Affiliates' liability for Taxes for any taxable period beginning after the Closing, Kodak will not settle such Tax

Audit without Purchaser's consent, which shall not be unreasonably withheld.

(e) Determination and Allocation of Consideration. The parties to this Agreement agree to determine the amount of and allocate the total consideration transferred by Purchaser to Seller pursuant to this Agreement (the "Consideration") in accordance with the fair market value of the assets and liabilities transferred. Purchaser shall deliver to the attention of the Director of Corporate Tax of Kodak one or more schedules allocating the Consideration no later than 30 days prior to the Closing. If Kodak disagrees with any items reflected on the schedules so provided, Kodak shall have the right to notify Purchaser of such disagreement and its reasons for so disagreeing, in which case Purchaser and Kodak shall attempt to resolve the disagreement, provided, however, that the parties agree that $150,000,000 shall be allocated to the participation interests of Schulke & Mayr GmbH and $2,000,000 shall be allocated to the stock of L&F Products International, Inc. If the parties have not resolved any such dispute at least 10 days prior to the Closing, the dispute shall be referred to the CPA Firm whose determination shall be binding on both parties. Seller and Purchaser agree to prepare, or cause to be prepared, and file, or cause to be filed, an IRS Form 8594 in a timely fashion in accordance with the rules under Section 1060 of the Code. To the extent that the

Consideration is adjusted after the Closing Date, the parties agree to revise and amend the schedule and IRS Form 8594 in the same manner and according to the same procedure. The determination and allocation of the Consideration derived pursuant to this subsection shall be binding on Kodak, Seller and Purchaser for all Tax reporting purposes.

(f) Employee Withholding and Reporting Matters. With respect to the Employees, from and after the Closing Date, Purchaser shall, in accordance with and to the extent permitted pursuant to Revenue Procedure 84-77, 1984-2 C.B. 753, assume all responsibility for preparing and filing Form W-2, Wage and Tax Statement, Form W-3, Transmittal of Income and Tax Statements, Form 941, Employer's Quarterly Federal Tax Return, Form W-4, Employee's Withholding Allowance Certificate, and Form W-5, Earned Income Credit Advance Payment Certificate. Seller and Purchaser agree to comply, and cause their respective Affiliates to comply, with the procedures described in Section 5 of Revenue Procedure 84-77.

(g) Transfer Taxes. All excise, sales, use, transfer (including real property transfer or gains), stamp, documentary, filing, recordation and other similar taxes which may be imposed or assessed as the result of the transactions effected pursuant to this Agreement (the "Transfer Taxes"), together with any interest, additions or penalties with respect thereto and any interest in respect

of such additions or penalties shall be borne equally by Seller and Purchaser. Any such Transfer Taxes or fees arising in connection with the L&F Transfer shall be borne entirely by Kodak, and Kodak shall indemnify the Purchaser Indemnified Parties for any liabilities arising in connection therewith. Any such Transfer Taxes or fees resulting from any subsequent transfer by the Purchaser or its Affiliates of all or any portion of the Transferred Assets or Assumed Liabilities occurring on or subsequent to the Closing shall be borne entirely by the Purchaser, and Purchaser shall indemnify the Seller Indemnified Parties for any liabilities arising in connection therewith. Notwithstanding the provisions of Section 5.4(b), which shall not apply to Tax Returns relating to Transfer Taxes, any Tax Returns that are required to be filed in connection with Transfer Taxes shall be prepared and filed when due by the party primarily or customarily responsible under the applicable local law for filing such Tax Returns, and such party shall use its reasonable best efforts to provide such Tax Returns to the other parties at least 10 days prior to the Due Date for such Tax Returns. Such Tax Returns shall be prepared on a basis consistent with the determination and allocation of the Consideration pursuant to Section 5.4(e).

(h) Section 338 Election. Purchaser will not make an election pursuant to Section 338 of the Code or a similar Law of any other country with respect to the

purchase of any Transferred Subsidiary pursuant to this Agreement except, the parties agree, upon Purchaser's request, to make an election under Section 338(h)(10) of the Code and Section 1.338(h)(10)-1(d) of the Treasury Regulations and comparable provisions of state or local law with respect to L&F Products International, Inc. The parties agree to cooperate fully in completing all forms required to effect such an election.

(i) (A) Purchaser's Claiming, Receiving or Using Refunds and Overpayments. If, after the Closing, Purchaser or its Affiliates (1) receive any refund, or (2) utilize the benefit of any overpayment, of Taxes (except to the extent reflected as an asset on the Adjusted Closing Balance Sheet) which (x) were paid by Kodak, Seller or any Affiliate of either of them prior to the Closing, or (y) were the subject of indemnification by Kodak or Seller pursuant to Article VII hereto, Purchaser shall promptly transfer, or cause to be transferred, to Kodak, or at Kodak's direction Seller, the entire amount of the refund or overpayment (including interest but net of Tax costs) received or utilized by Purchaser or its Affiliates. Purchaser agrees to claim any such refund or to utilize any such overpayment and to furnish to Kodak all information, records and assistance reasonably necessary to verify the amount of the refund or overpayment provided that such refund, claim or overpayment utilization does not have any adverse effect on

Purchaser or its Affiliates. Kodak shall reimburse Purchaser's reasonable costs in connection with claiming such refund or utilizing such overpayment.

(B) Seller's Claiming, Receiving or Using Refunds and Overpayments. If, after the Closing, Seller or its Affiliates (1) receive any refund, or (2) utilize the benefit of any overpayment, of Taxes which were paid by Purchaser or any Affiliate as an Assumed Liability, Seller shall promptly transfer, or cause to be transferred, to Purchaser, the entire amount of the refund or overpayment (including interest but net of Tax costs) received or utilized by Seller or its Affiliates. Seller agrees to claim any such refund or to utilize any such overpayment and to furnish to Purchaser all information, records and assistance reasonably necessary to verify the amount of the refund or overpayment provided that such refund, claim or overpayment utilization does not have any adverse effect on Seller or its Affiliates. Purchaser shall reimburse Seller's reasonable costs in connection with claiming such refund or utilizing such overpayment.

(j) Each Party's Claiming and Realizing of Tax Benefits in Respect of Indemnified Liabilities

(i) Procedures. If, after the Closing, any Purchaser Indemnified Party or any Seller Indemnified Party realizes any Loss for which such party is indemnified hereunder, such Indemnified Party shall, if reasonable,

claim any such Loss and claim to the fullest extent possible all deductions available as a result of such Loss. Each of Purchaser and Kodak agree to furnish, or cause to be furnished, to the other a certificate of Purchaser or Kodak's, respective, tax directors verifying the amount of the decrease, if any, in the income taxes paid by the Purchaser Indemnified Parties or the Seller Indemnified Parties, respectively, as a result of recognizing such Loss and claiming all such available deductions (as compared to the income taxes such parties and their respective Affiliates would otherwise have paid without recognizing such Loss and deductions).

(ii) Methodology. In determining for the purposes of this Section 5.4 and Section 7.6 the decrease in income taxes paid by a party as a result of recognizing a Loss and claiming a deduction such calculation shall be made by comparing the income taxes paid by the party taking into account such Loss and deduction with the income taxes the party would have paid had it not taken into account such Loss and deduction.

(k) Post-Closing Actions Which Affect Kodak or Seller's Liability for Taxes. (i) During the period beginning on the Closing Date and ending on December 31, 1994 Purchaser shall not permit the Transferred Subsidiaries to (A) sell (including a deemed sale pursuant to Section 338 of the Code or a similar law of any other country),

exchange, distribute, reorganize or otherwise dispose of the stock of any foreign subsidiary corporation, or dispose of any other property the sale of which produces foreign personal holding company income within the meaning of Section 954(a)(1) of the Code or a similar law of any other country or (B) make any distribution (including a deemed distribution) to shareholders in excess of current earnings and profits (as computed for U.S. Federal income tax purposes) derived during the period beginning on the day following the Closing Date and ending on December 31, 1994.

(ii) Except to the extent required by law, neither Purchaser, the Transferred Subsidiaries nor any Affiliate of either of them shall, without the prior written consent, which shall not be unreasonably withheld, of Kodak on the one hand, and neither Kodak, Seller, Sterling, the Subsidiaries nor any of their respective Affiliates shall, without the prior written consent, which shall not be unreasonably withheld, of Purchaser on the other hand, amend any Tax Return filed by, or with respect to, the Transferred Subsidiaries or any of their subsidiaries for any taxable period, or portion thereof, beginning before the Closing Date.

(l) Maintenance of Books and Records. Until the applicable statute of limitations (including periods of waiver) has run for any Tax Returns filed or required to be filed covering the periods up to and including the Closing

Date, Purchaser shall retain all Books and Records with respect to the Business in existence on the Closing Date and after the Closing Date will provide Kodak access to such Books and Records for inspection and copying by Kodak (at Kodak's expense) and its agents upon reasonable request and upon reasonable notice. Up to three years after the expiration of such period, no such Books and Records shall be destroyed by Purchaser without first advising the Director of Corporate Tax of Kodak in writing detailing the contents of any such Books and Records and giving Kodak (at Kodak expense) at least 90 days to obtain possession thereof.

(m) Assistance and Cooperation. The parties agree that, after the Closing Date:

(A) The parties shall assist (and cause their respective affiliates to assist) the other parties in preparing any Tax Returns with respect to the Business which such other parties are responsible for preparing and filing;

(B) The parties shall cooperate fully in preparing for any audits of, or disputes with taxing authorities regarding, any Tax Returns and payments in respect thereof;

(C) The parties shall make available to each other and to any taxing authority as reasonably

requested all relevant Books and Records relating to Taxes;

(D) The parties shall provide timely notice to the other in writing of any pending or proposed audits or assessments with respect to Taxes for which the other may have an indemnification obligation under this Agreement;

(E) The parties shall furnish the other with copies of all relevant correspondence received from any taxing authority in connection with any audit or information request with respect to any Taxes referred to in subsection (D) above; and

(F) The party requesting assistance or cooperation shall bear the other party's out-of-pocket expenses in complying with such request to the extent that those expenses are attributable to fees and other costs of unaffiliated third-party service providers.

(n) Future Elections. Without Purchaser's consent, which shall not be unreasonably withheld, the Seller and Kodak will refrain, and will cause each of its Affiliates and the Subsidiaries (excluding, after the Closing, the Transferred Subsidiaries and their subsidiaries) to refrain, from making, filing, or entering into any election, consent, or agreement relating to Taxes with respect to the Transferred Subsidiaries or any of their subsidiaries which may have any material adverse impact upon

the Purchaser, any of the Transferred Subsidiaries or the Business, except for extensions of the statute of limitations with respect to Tax Returns of the U.S. Federal, state or local affiliated, consolidated, combined or unitary group with respect to which Kodak or Seller is the common parent.

(o) Arbitration of All Disputes. In the event that Seller and Kodak, on the one hand, and Purchaser, on the other, cannot agree on any calculation of any amount relating to Taxes or the interpretation or application of any provision of this Agreement relating to Taxes, such dispute shall be resolved by the CPA Firm, whose decision shall be final and binding upon all parties involved and whose expenses shall be divided equally between Kodak, on the one hand, and Purchaser, on the other.

(p) Powers of Attorney. At least 15 days prior to Closing, Kodak will provide, or cause to be provided, to Purchaser a schedule listing any powers of attorney which were granted by any Transferred Subsidiary and are outstanding as of such date. At least 5 days prior to Closing, Purchaser shall provide Kodak with a schedule listing which of those powers of attorney Purchaser wants terminated as of the Closing, and immediately prior to the Closing Kodak will terminate, or cause to be terminated, each such power of attorney appearing on the schedule provided by Purchaser.

Section 5.5 Post-Closing Obligations of the Business to Certain Employees.

(a) Purchaser shall assume the collective bargaining agreements set forth on Schedule 3.14 to the extent permitted under such agreements and shall offer employment on the Closing Date to the same extent provided by Seller immediately prior to the Closing Date to the bargaining unit employees Related to the Business covered by such agreements.

(b) Purchaser shall offer employment at the same salary rate, at the same location (or within 30 miles thereof) and with comparable responsibilities to all Active Employees on the Closing Date. Purchaser shall offer employment to all Inactive Employees when they are eligible to return to active service; provided, however, that no such employee shall be entitled to reinstatement to active service if he is incapable of working in accordance with the policies, practices and procedures of Purchaser, his return to employment is contrary to the terms of his leave, or he does not have any right to reinstatement under Seller's written employment policies (or non-written policies described in Schedule 3.10(a)) or applicable Law. Active and Inactive Employees shall sometimes be referred to herein as "Transferred Employees."

(c) Purchaser will maintain for a period of two years after the Closing Date, without interruption, a

severance pay plan covering U.S. Transferred Employees from their date of employment with Purchaser which provides, under the terms of such plan, severance pay for such U.S. Transferred Employees which is equal to the greater of (i) the amount of severance pay that would have been available to them under the Seller's severance pay plan set forth on Schedule 3.10(a) and applicable to such Employees prior to the Closing Date, or (ii) the amount of severance pay that would be available to them under the Purchaser's severance pay plan applicable to such Employees. Purchaser will also provide coverage for U.S. Transferred Employees under its other employee benefit plans and programs and its incentive compensation plans and programs which is no less favorable than that generally provided from time to time by Purchaser to similarly situated employees of its United States business. Purchaser will provide coverage for non-U.S. Transferred Employees under its employee benefit plans and programs and its incentive compensation plans and programs which is no less favorable than that generally provided from time to time by Purchaser to its similarly situated employees in the applicable jurisdictions. Transferred Employees shall be given credit, without duplication, for all service with Seller or any Subsidiary or Affiliate (or service credited by Seller or any Subsidiary or Affiliate) under (i) all employee benefit plans, programs and policies, and fringe benefits of the

Purchaser in which they become participants for purposes of eligibility (including eligibility for early retirement) and vesting, but not for purposes of calculating the amount of the matching contributions under Purchaser's Savings Investment Plan, and (ii) the Purchaser's vacation, service award and severance plans for purposes of calculating the amount of each Transferred Employee's benefits under such plans. For purposes of calculating benefit accruals under Purchaser's defined benefit pension plan, Purchaser shall credit, without duplication of benefits, Transferred Employees with their service with Seller or any Subsidiary or Affiliate (or service credited by Seller or any Subsidiary or Affiliate) under Seller's defined benefit pension plan applicable to such Employees.

(d) "Active Employees" means all active, non-bargaining unit Employees whose employment is Related to the Business, including employees on temporary leave for purposes of jury or annual two-week national service/ military duty and employees on vacation or a regularly scheduled day off from work. "Inactive Employees" means all non-bargaining unit Employees (other than Former Employees) whose employment is Related to the Business and who on the Closing Date are on a Nonmedical Leave, short-term disability or a medical leave of absence. Employees of Seller who perform services with respect to the Business and the DIY Business have been allocated equitably on a full-

time basis to the Business or DIY Business. Prior to the Closing Date, Seller shall provide Purchaser with a complete and correct list of current and former employees of the DIY Business as of a date on or after the date hereof, together with such other information regarding such employees as the Purchaser may reasonably request.

(e) Effective as of the Closing Date, Purchaser shall cause one or more defined contribution plans (the "Transferee Savings Plans") to be established for or to accept the transfer of account balances of Employees who were participants in the L&F Products Employee Savings Plan I and the L&F Products Employee Savings Plan II (the "Seller Savings Plans"). Such Employees are referred to hereinafter as the "Savings Plan Employees".

Seller shall cause to be transferred from the Seller Savings Plans to the Transferee Savings Plans the liability for the account balances as of the date of transfer of the Savings Plan Employees, together with cash equal to such liability, and Purchaser shall cause the Transferee Savings Plans to accept such transfers. The transfer of cash shall take place within 90 days after the Closing Date; provided, however, that in no event shall such transfer take place until the later of (i) the furnishing to Seller by Purchaser of a favorable determination letter from the Internal Revenue Service with respect to the qualification of the Transferee Savings Plans under Section 401(a)

of the Code, as amended to comply with changes to the qualification requirements of Section 401(a) of the Code made by the Tax Reform Act of 1986 and other recent legislation and regulations and (ii) the receipt by Seller of favorable determination letters from the Internal Revenue Service with respect to the continued qualification of the Seller Savings Plans under Section 401(a) of the Code, as amended to comply with changes to the qualification requirements of Section 401(a) of the Code made by the Tax Reform Act of 1986 and other recent legislation and regulations.

(f) Effective as of the Closing Date, Purchaser shall amend or establish one or more defined benefit plans (the "Transferee Pension Plans") to accept the transfer of accrued benefits of Employees who participated in the Kodak Retirement Income Plan, the Sterling Products International Inc. Pension Plan for Salaried Employees who are Employed at Facilities Located in Puerto Rico and the Retirement Income Plan for the Hourly Employees of L&P Products (the "Seller Retirement Plans"). Such Employees are referred to hereinafter as the "Retirement Plan Employees"). The Transferee Pension Plans shall provide, upon the transfer of assets referred to below, that the benefit liabilities of the Retirement Plans Employees under the Transferee Pension Plans shall in no event be less than their benefit

liabilities under the Seller Retirement Plans as of the Closing Date.

With respect to each Seller Retirement Plan, Kodak, Seller or Sterling, as applicable, shall cause to be transferred from the trust under such Seller Retirement Plan to the trust under the applicable Transferee Pension Plan cash equal to the product of (x) times (y), where (x) equals the fair market value of the assets of each Seller Retirement Plan on the date of actual transfer of assets from the trust thereunder to the trust under the applicable Transferee Pension Plan, and (y) equals a fraction, the numerator of which is the present value of the benefit liabilities on a termination basis of the Retirement Plan Employees under the applicable Seller Retirement Plan as of the effective date of the transfer (the last day of the calendar month in which Closing Date occurs) and the denominator of which is the present value of the benefit liabilities on a termination basis of all participants in the applicable Seller Retirement Plan as of the effective date of the transfer (the last day of the calendar month in which Closing Date occurs); provided, however, that the benefits of the Retirement Plan Employees shall be calculated as if the credited service for each Retirement Plan Employee continued to accrue through the last day of the calendar month in which the Closing Date occurs.

Purchaser shall cause the Transferee Pension Plans to accept such transfers.

The "Pension Shortfall Amount" shall be equal to the excess, if any, of (x) the "accumulated benefit obligations" (as defined in Statement of Financial Accounting Standards No. 87) of the Retirement Plan Employees under such Seller Retirement Plan as of the Closing Date, calculated using (i) the same census data and the same precision as for purposes of Section 414(l) of the Code and (ii) the actuarial assumptions that were used in preparing the audited financial statements of Seller for the year ended December 31, 1993, except that the interest rate assumption shall be equal to the sum of (A) the yield to maturity of 30-year U.S. Treasury bonds on the Closing Date and (B) 75 basis points over (y) the amount actually transferred to the applicable Transferee Pension Plan.

The amount to be transferred shall be equitably adjusted to take into account non-investment receipts and disbursements of the Seller Retirement Plans (i) after the Closing Date but prior to the date of transfer provided for in this subparagraph, such as distributions and contributions and (ii) relating to plan-to-plan transfers after the date hereof. The amounts under the preceding two paragraphs shall be determined by the actuary for the Seller Retirement Plan and reviewed and approved (such approval not to be unreasonably withheld) as being done in accordance with the

methodology and assumptions set forth in this Section 5.5(f) by the actuary for the Transferee Pension Plan. The Seller Retirement Plans shall not be amended on or after the date hereof through the Closing Date to increase the benefit liabilities under such Plans.

The benefit liabilities under each Seller Retirement Plan shall be valued as of the effective date of the transfer (the last day of the calendar month in which the Closing Date occurs), on the basis of the actuarial assumptions for the applicable Seller Retirement Plan as contained in the most recent actuarial report for such Plan that is available as of the date of this Agreement, as determined by the actuary for the Seller Retirement Plan and reviewed by the actuary for the Transferee Pension Plan.

The transfer of cash referred to above shall take place within 180 days after the Closing Date; provided, however that in no event shall such transfer take place until the last to occur of the following: (i) Purchaser has furnished to Kodak, Seller or Sterling, as applicable, a favorable determination letter from the Internal Revenue Service with respect to the qualification of the applicable Transferee Pension Plan under Section 401(a) of the Code, as amended to comply with changes to the qualification requirements of Section 401(a) of the Code made by the Tax Reform Act of 1986 and other recent legislation and regulations, (ii) the receipt by Kodak, Seller or Sterling,

as applicable, of a favorable determination letter from the Internal Revenue Service with respect to the continued qualification of the applicable Seller Retirement Plan under Section 401(a) of the Code, as amended to (A) comply with changes to the qualification requirements of Section 401(a) of the Code made by the Tax Reform Act of 1986 and other recent legislation and regulations and (B) provide for the transfer of assets and benefit liabilities referred to in this Section, and (iii) the receipt of any other necessary governmental approval.

Notwithstanding anything contained in this Section to the contrary, (A) in the event that the Internal Revenue Service or any other governmental agency takes the position in a determination letter, ruling, advisory opinion or other written or oral communication that the transfer of assets referred to in this Section cannot be made unless (i) additional contributions are made to a Seller Retirement Plan or a Transferee Pension Plan or (ii) a Seller Retirement Plan retains primary or secondary liability with respect to the benefit liabilities under such Seller Retirement Plan attributable to Retirement Plan Employees or (B) in the event that a lawsuit is instituted by any of the foregoing or by one or more participants in, or fiduciaries (other than Seller, Sterling, Kodak or Purchaser) of, a Seller Retirement Plan or a Transferee Pension Plan which seeks to enjoin such transfer, to require additional contributions to

a Seller Retirement Plan or Transferee Pension Plan, or to have a Seller Retirement Plan remain liable in whole or in part with respect to any of the benefit liabilities under such Seller Retirement Plan attributable to Retirement Plan Employees, then the transfer of assets referred to in this Section from such Seller Retirement Plan will not be made until the earliest of (I) the date the issues raised by the Internal Revenue Service or any other governmental agency or such lawsuit are resolved favorably, and Seller, Sterling or Kodak and, as applicable, the Seller Retirement Plan shall make every effort in good faith to carry out the asset transfer, including, but not limited to, the vigorous defense of any lawsuit described in clause (B), and the exhaustion of all rights of available judicial review and appeal, or (II) the date Seller and Purchaser, Sterling and Purchaser, or Kodak and Purchaser, as applicable, enter into a written agreement to resolve on a basis mutually satisfactory to them the issues raised by the Internal Revenue Service or any other governmental agency or such lawsuit.

Pending the completion of the transfers described in this paragraph (f), Seller, Sterling or Kodak, as applicable, and Purchaser shall make arrangements for any required payments to the Retirement Plan Employees from the Seller Retirement Plans. Seller and Purchaser shall provide

each other with access to information reasonably necessary in order to carry out the provisions of this paragraph.

(g) Purchaser shall waive any preexisting condition limitations for such conditions covered under Seller's medical, health or dental plans and shall honor any deductible and out of pocket expenses incurred by Employees and their beneficiaries under Seller's medical, dental or health plans during the portion of the calendar year preceding the Closing Date. Purchaser shall waive any medical certification under its group term life insurance plan for any Employees up to the amount of coverage such Employee had under Seller's life insurance plan (but subject to any limits on the maximum amount of coverage under Purchaser's life insurance plan).

(h) Sterling shall retain the liability for amounts payable under the Sterling Winthrop Inc. Deferred Compensation Plan, Sterling Winthrop Inc. Supplemental Executive Retirement Plan and Sterling Winthrop Inc. Foreign Service Pension Plan (the "Sterling Foreign Service Pension Plan") to all employees of Sterling and its subsidiaries who, on or before the closing date under the Asset Purchase Agreement among Kodak, Sterling and Sanofi (the "Sanofi Agreement"), have retired, are receiving or are eligible to receive long-term disability benefits, or have otherwise terminated employment, and to the beneficiaries and survivors of such employees (herein referred to collectively

as the "Pre-Sanofi Closing Date Former Employees"). Purchaser shall pay to Sterling quarterly on an estimated basis, within 30 days, in accordance with Seller's statement of the estimated annual cost of the amounts payable to the Pre-Sanofi Closing Date Former Employees under such Plans, an amount equal to the result of multiplying one-fourth of such annual cost for each such Plan by a fraction, the numerator of which is equal to the number of U.S. Active Employees on the closing date under the Sanofi Agreement, and the denominator of which is equal to the number of U.S. active employees of Sterling and all of its subsidiaries on the closing date under the Sanofi Agreement (which must be on or before the Closing Date for purposes of this Section 5.5(h)). (The determination of whether an employee of Sterling and its subsidiaries is an active employee shall be determined using the principles set forth in Section 5.5(d); provided, however, that with respect to the Foreign Service Pension Plan such fraction shall be determined on the basis of non-U.S. Active Employees and non-U.S. active employees of Sterling and its subsidiaries.) Any overpayment or underpayment of such annual cost shall be adjusted within 60 days after Sterling furnishes to Purchaser a statement of such annual costs (subject to review and acceptance by Purchaser), by a payment to Sterling or to Purchaser, as applicable.

(i) Purchaser shall assume the liability for amounts payable under the L&F Products Inc. Deferred Compensation Plan, L&F Products Inc. Supplemental Executive Retirement Plan and certain other liabilities described in Schedule 5.5(i) to all Former Employees, except as provided in Section 5.5(h).

(j) Purchaser shall assume the liability for, and honor the terms and conditions of, all executive employment agreements of Active and Inactive Employees in effect on the date of this Agreement. All employment contracts covering U.S. Active or Inactive Employees or key non-U.S. Active or Inactive Employees are listed on Schedule 5.5(j).

(k) Sterling and Purchaser shall use their best efforts to provide for transfers of assets and liabilities from Seller's non-U.S. benefit plans with respect to Transferred Employees in a manner consistent with the general principles expressed in this Section.

Section 5.6 Compliance with WARN, etc. Purchaser with respect to the Active and Inactive Employees will timely give all notices required to be given under WARN or other similar statutes or regulations of any jurisdiction relating to any plant closing or mass layoff or as otherwise required by any such statute, and Seller shall reasonably cooperate with Purchaser to enable Purchaser to provide such notices. For this purpose, Purchaser shall be deemed to have caused a mass layoff if the mass layoff would not have

occurred but for Purchaser's failure to offer employment to the Active or Inactive Employees in accordance with the terms of this Agreement.

Section 5.7 Compliance with State Property Transfer Statutes. (a) The parties shall use their reasonable efforts to comply with all requirements of applicable state property transfer statutes, including, without limitation, the New Jersey Industrial Site Recovery Act ("ISRA") and the Illinois Responsible Property Transfer Act ("ILRPTA"), as may be required by the relevant governmental authorities. Seller, Sterling and Kodak agree to provide Purchaser with any documents to be submitted to the relevant governmental authorities prior to submission, and Seller, Sterling and Kodak shall not take any action to comply with such statutes without Purchaser's prior consent, which consent shall not be unreasonably withheld.

(b) Seller agrees to cooperate with Purchaser and to assist Purchaser by identifying the Environmental Permits required by Purchaser to operate the Business from and after the Closing Date and either transferring existing Environmental Permits of Seller, Sterling and their Subsidiaries, where permissible, or obtaining new Environmental Permits for Purchaser.

Section 5.8 Further Assurances. At any time after the Closing Date, Seller, Sterling and Kodak, on the one hand, and Purchaser, on the other hand, shall promptly

execute, acknowledge and deliver any other assurances or documents reasonably requested by the other, as the case may be, and necessary for it, as the case may be, to satisfy its respective obligations hereunder or obtain the benefits contemplated hereby.

Section 5.9 Use of Corporate Names. Except as set forth in the subsections of this Section 5.9, after the Closing, Purchaser shall not use any of the Sterling Trademarks.

(a) For a period of nine months after the Closing, Purchaser may continue to use the Sterling Trademarks on signage, invoices and stationery;

(b) For a period of nine months after the Closing, or until inventory of labels, packaging, nameplates and promotional materials are exhausted (whichever occurs first), Purchaser may continue to use the Sterling Trademarks on labels, packaging, nameplates and promotional materials in existence as of the Closing Date and marked with Sterling Trademarks; Purchaser may apply such labels, nameplates and packaging only to inventory of Product that is in existence as of the Closing Date, which was manufactured by Seller.

Section 5.10 Certain Matters Involving the Intellectual Property. On or before the Closing Date Kodak, Sterling and Seller will take, or cause to be taken, at their expense, all necessary steps to record with the

appropriate United States governmental agencies the transfer from Seller, Sterling, Kodak or any of their Affiliates, as the case may be, to Purchaser of all Intellectual Property previously registered or patented in the United States. As soon as practicable after the Closing Date Kodak, Sterling and Seller will take, or cause to be taken, at their expense, all necessary steps to record with the appropriate foreign governmental agents the transfer of all Intellectual Property previously registered or patented in such jurisdictions and to otherwise record or evidence Purchaser's rights in and to the Intellectual Property, including the filing or amendment of any registered user certificates, licenses, agreements or similar documents.

Section 5.11 [Intentionally omitted.]

Section 5.12 Transition Services. On the Closing Date, Purchaser shall execute and deliver, and Kodak shall cause Seller or an Affiliate of Seller other than Sterling to execute and deliver, a transition services agreement, in form and substance reasonably satisfactory to Purchaser, pursuant to which (i) for a period of one year following the Closing Date, Sterling shall make available to Purchaser, to the extent requested, the support and administrative services currently being provided to the Business on terms, and for a price equal to Sterling's fully allocated cost determined on a basis, substantially consistent with Sterling's recent historical practice, including, without

limitation, computer and data processing services and any software associated therewith, customer billing services, customer equipment services, services related to the maintenance of Intellectual Property, the use of office and warehouse facilities and related site services, utility services, distribution services and maintenance services for equipment included in the Transferred Assets (such services, "Transition Services"), and (ii) Purchaser shall enter into an agreement with Seller or any purchaser of the DIY Business, in form and substance reasonably satisfactory to Seller or such purchaser, pursuant to which Purchaser shall make available to Seller, or any purchaser of the DIY Business, to the extent requested, on terms, and for a price equal to Purchaser's fully allocated cost determined on a basis substantially consistent with Sterling's recent historical practice, such Transition Services as are currently being provided to the DIY Business for a period ending one year after the closing of the sale of the DIY Business (but in any event not later than two years from the date hereof).

Section 5.13 Supply Agreements. (a) At the Closing, Purchaser and Sterling shall execute and deliver a supply agreement (the "Sterling Supply Agreement"), in form and substance reasonably satisfactory to Purchaser, pursuant to which Sterling shall agree to maintain in place all arrangements existing on the Closing Date that provide for

the supply by Sterling of materials to the Business for a period of three years from the Closing Date.

(b) At the Closing, Purchaser and Seller or the purchaser of the DIY Business shall execute and deliver a supply agreement (the "DIY Supply Agreement"), in form and substance reasonably satisfactory to Purchaser, pursuant to which Seller or the purchaser of the DIY Business, as the case may be, shall agree to maintain in place all arrangements existing on the Closing Date that provide for the supply by Seller or the purchaser of the DIY Business, as the case may be, of materials to the Business for a period of three years from the Closing Date.

(c) At the Closing, Purchaser and (as designated by Kodak) Seller or the purchaser of the DIY Business shall execute and deliver a supply agreement (the "Purchaser Supply Agreement"), in form and substance reasonably satisfactory to Seller or the purchaser of the DIY Business, as the case may be, pursuant to which Purchaser shall agree to maintain in place all arrangements existing on the Closing Date that provide for the supply by Purchaser of materials to the DIY Business for a period of three years from the Closing Date.

Section 5.14 No Shopping. Kodak, Sterling and Seller agree that they shall not, and shall not permit their Affiliates or representatives to, directly or indirectly, in any way contact, initiate, solicit, enter into or conduct

any discussions or negotiations, or enter into any agreement, whether written or oral, with any Person with respect to the direct or indirect sale of the Business or the Transferred Assets (except, in the latter case, in the ordinary course of business). Kodak shall, immediately upon receipt thereof by any officer of Kodak, Sterling or Seller or any of their respective Affiliates, notify Purchaser of the existence and terms of any contact, proposal or offer with respect to any of the foregoing.

Section 5.15 Non-Compete. Each of Kodak, Sterling and Seller agrees that, for a period of five years from the Closing Date, neither Kodak, Seller any of Seller's Subsidiaries nor any of their respective transferees, successors or assignees will compete with the Business as conducted on the Closing Date; provided, however, that this provision shall not (i) apply to the purchaser of the DIY Business except in respect of the use of shared Intellectual Property, if any, or (ii) prohibit Kodak from owning less than 10% in the aggregate of any Person's voting securities, if none of the employees of Seller, Kodak or their affiliates is involved in any way in the management of such Person.

Section 5.16 PineSol Litigation. Notwithstanding any other provision of this Agreement to the contrary, immediately following the Closing Purchaser shall assume, and shall thereafter have the sole power to direct and

control, the defense of the PineSol Litigation. Purchaser shall provide on a periodic basis such information, including the opportunity for discussions with counsel, as Seller shall reasonably request and shall not adversely affect the preservation of Purchaser's attorney-client privilege regarding the status of and developments with respect to the PineSol Litigation. Purchaser agrees that it shall not, without the prior written consent of Kodak, settle, compromise or offer to settle or compromise the PineSol Litigation on a basis which would result in the imposition of monetary damages with respect to the period prior to the Closing Date without the consent of Kodak, which consent shall not be unreasonably withheld. Prior to the Closing, Kodak, Sterling and Seller agree to diligently defend the PineSol Litigation and not to file or amend any pleadings or alter their defense strategy without the consent of Purchaser (which shall not be unreasonably withheld). In addition, Kodak, Sterling and Seller agree not to settle, compromise or offer to settle or compromise the PineSol Litigation without the consent of Purchaser.

Section 5.17 Insurance. (a) Kodak and Seller

shall, until the Closing, maintain insurance coverage with respect to the Business and the Transferred Assets at presently existing levels. At the closing, Kodak and Purchaser shall enter into a mutually satisfactory claim service agreement on terms substantially in accordance with Schedule 5.17.

(b) With respect to property insurance underwritten by all insurance companies that are not Affiliates of Kodak, Kodak or Seller will promptly file and diligently prosecute all claims relating to any Loss suffered by the Business after December 31, 1993 that is covered by such insurance. To the extent that Kodak or Seller receives payment in respect of any such claim Kodak or Seller will either (a) apply the amounts received to the Business in the event such amounts are received prior to Closing or (b) pay over such amounts to Purchaser. To the extent permissible under the terms of such insurance policies and applicable Law, Kodak or Seller shall cause Purchaser to be a named beneficiary under such insurance policies and, as of the Closing Date, to assign outstanding claims to Purchaser.

(c) With respect to insurance covering liability to third parties underwritten by all insurance companies that are not Affiliates of Kodak and that is written on a claims-made basis, Kodak or Seller will promptly file and diligently prosecute all claims relating to any liability

that constitutes or would constitute an Assumed Liability and that is covered by such insurance. To the extent that Kodak or Seller receives payment in respect of any such liability which had not been discharged by Seller prior to Closing, Kodak or Seller will either apply such amounts to discharge (to the extent of such amounts) such liability prior to the Closing or pay over such amounts to Purchaser at or after Closing, in either case promptly after the receipt thereof by Kodak or Seller. Seller will assign outstanding claims to Purchaser as of the Closing Date.

(d) With respect to insurance of Seller covering liability to third parties that is written on an occurrence basis, to the extent Seller receives payment in respect of any claim relating to a liability that constitutes or would constitute an Assumed Liability and has not been discharged prior to Closing, Seller will either apply such amounts to discharge (to the extent of such amounts) such liability prior to the Closing or will pay over such amounts to Purchaser at or after Closing, in either case promptly after receipt thereof by Seller. Seller shall, to the extent permissible under the terms of such insurance policies and applicable law, cause Purchaser to be a named beneficiary in respect of any claims relating to Assumed Liabilities which had not been discharged by Seller prior to Closing and, as of the Closing Date, to assign outstanding claims to Purchaser.

Section 5.18 Reserve. Seller hereby covenants and agrees to prepare and deliver to Purchaser within 60 days after the date of this Agreement a schedule (the "Reserve Schedule") which shall (i) restate the short period reserve as reflected in Accrued Expenses in the Balance Sheet, (ii) allocate such reserve into the categories of specified and non-specified items with respect to liabilities arising from incidents that occurred on or before December 31, 1993 and (iii) in accordance with GAAP itemize each specified item included therein in reasonable detail.

ARTICLE VI

CONDITIONS TO CLOSING

Section 6.1 Conditions to the Obligations of Purchaser and Seller. The obligations of the parties hereto to effect the Closing are subject to the satisfaction (or waiver) prior to the Closing of the following conditions:

(a) HSR and Other Competition Laws. All filings under U.S. Antitrust Laws and any other applicable Competition Laws shall have been made and any required waiting period under the such laws applicable to the transactions contemplated hereby shall have expired or been earlier terminated.

(b) No Injunctions. No court or governmental authority of competent jurisdiction shall have enacted,

issued, promulgated, enforced or entered any statute, rule, regulation, or non-appealable judgment, decree, injunction or other order which is in effect on the Closing Date and prohibits the consummation of the Closing.

(c) Shareholder Approval. This Agreement and the transactions contemplated hereby shall have been approved by the shareholders of Purchaser in accordance with the requirements of the London Stock Exchange.

Section 6.2 Conditions to the Obligations of Purchaser. The obligation of Purchaser to effect the Closing is subject to the satisfaction (or waiver) prior to the Closing, of the following conditions:

(a) Representations and Warranties. The representations and warranties of Seller, Sterling and Kodak contained herein (i) that are unqualified as to materiality shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of the Closing, as if made as of the Closing and (ii) that are qualified as to materiality shall have been true and correct when made and shall be true and correct as of the Closing, as if made as of the Closing (except, in the case of both (i) and (ii), that representations and warranties that are made as of a specific date need be true and correct in all material respects or true and correct, as the case may be, only as of such date), and Purchaser shall have received certificates to such effect dated the Closing

Date and executed by a duly authorized officer of Seller, by a duly authorized officer of Sterling and by a duly authorized officer of Kodak.

(b) Covenants. The covenants and agreements of Seller, Sterling and Kodak to be performed on or prior to the Closing shall have been duly performed and Purchaser shall have received certificates to such effect dated the Closing Date and executed by a duly authorized officer of Seller, by a duly authorized officer of Sterling and by a duly authorized officer of Kodak.

(c) Legal Opinions. Purchaser shall have received the opinions of Seller's counsel, each dated as of the Closing Date, addressed and reasonably satisfactory to Purchaser as to the matters set forth in Schedule 6.2(c).

(d) Ancillary Agreements. Seller and Kodak shall have executed and delivered the Ancillary Agreements.

(e) No Material Adverse Change. Since December 31, 1993, the Business and the Transferred Assets shall not have suffered a Material Adverse Change.

(f) Other Consents and Approvals. All required approvals shall have been obtained under ISRA and ILRPTA, and all other required consents, approvals, waivers, authorizations, notices and filings shall have been obtained, which, if not obtained or made, would have a Material Adverse Effect or would materially impair or delay the ability of Purchaser to effect the Closing or to own the

Transferred Assets and conduct the Business immediately following the Closing.

(g) Absence of Proceedings. No Proceeding shall have been instituted by any Federal, state, local or foreign governmental authority (i) to restrain or prohibit the consummation by Purchaser or any of its Affiliates, or to invalidate, the transactions contemplated by this Agreement in any material respect, or (ii) which may affect the right of Purchaser or any of its Affiliates to own, operate or control, after the Closing any Selected Marks or any other portion of the Transferred Assets or the Business that is material to the Business taken as a whole.

Section 6.3 Conditions to the Obligations of Kodak and Seller. The obligation of Seller to effect the Closing is subject to the satisfaction (or waiver) prior to the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of Purchaser contained herein (i) that are unqualified as to materiality shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of the Closing, as if made as of the Closing, and (ii) that are qualified as to materiality shall have been true and correct when made and shall be true and correct as of the Closing (except that, in the case of both (i) and (ii), representations and warranties that are made as of a specific date

need be true and correct in all material respects or true and correct, as the case may be, only as of such date), and Seller and Kodak shall have received a certificate to such effect dated the Closing Date and executed by a duly authorized officer of Purchaser.

(b) Covenants. The covenants and agreements of Purchaser to be performed on or prior to the Closing shall have been duly performed, and Seller and Kodak shall have received a certificate to such effect dated the Closing Date and executed by a duly authorized officer of Purchaser.

(c) Legal Opinions. Seller and Kodak shall have received the opinions of the Purchaser's counsel, dated as of the Closing Date, addressed and reasonably satisfactory to Seller and Kodak as to the matters set forth in Schedules 6.3(c).

(d) Ancillary Agreements. Purchaser shall have executed and delivered the Ancillary Agreements.

ARTICLE VII

SURVIVAL; INDEMNIFICATION

Section 7.1 Survival. The representations and warranties of Seller, Sterling and Kodak contained in this Agreement shall survive the Closing for the respective periods set forth in this Section 7.1 notwithstanding any investigation at any time by or on behalf of Purchaser and shall not be considered waived by Purchaser's consummation of the purchase and sale under this Agreement with knowledge

of any breach or misrepresentation by Seller, Sterling or Kodak. All of the representations and warranties of Seller, Sterling and Kodak contained in this Agreement and all claims and causes of action with respect thereto shall terminate upon expiration of 24 months after the Closing Date, except that (i) the representations and warranties in Sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.16, 3.17 and 3.22 shall have no expiration date, (ii) the representation and warranty in Section 3.9 shall survive, with respect to any Tax Return, until the applicable statute of limitations has run for any such Tax Return required to be filed on or before the date of this Agreement, (iii) the representation and warranty in Section 3.12 shall survive for eight years, (iv) the representation and warranty in Section 3.13 shall survive for 42 months, and (v) the representations and warranties of Purchaser contained in this Agreement shall have no expiration date; it being understood that in the event notice of any claim for indemnification under Section 7.2(i) or Section 7.3(a) (i), (ii) and (vi) (insofar as related to Section 3.12) hereof shall have been given (within the meaning of Section 9.1) within the applicable survival period, the representations and warranties that are the subject of such indemnification claim shall survive until such time as such claim is finally resolved.

Section 7.2 Indemnification by Purchaser. Purchaser hereby agrees that it shall indemnify, defend and

hold harmless Seller, Sterling, Kodak, their Affiliates, and, if applicable, their respective directors, officers, shareholders, partners, attorneys, accountants, agents and employees and their heirs, successors and assigns (the "Seller Indemnified Parties") from, against and in respect of any damages, claims, losses, charges, actions, suits, proceedings, deficiencies, taxes, interest, penalties, and reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, removal costs, remediation costs, closure costs, fines, penalties and expenses of investigation and ongoing monitoring) (collectively, the "Losses") imposed on, sustained, incurred or suffered by or asserted against any of the Seller Indemnified Parties, directly or indirectly relating to or arising out of:

(i) any breach of any representation or warranty made by Purchaser contained in this Agreement for the period such representation or warranty survives;

(ii) the Assumed Liabilities; and

(iii) any breach of any covenant or agreement of Purchaser contained in this Agreement.

Section 7.3 Indemnification by Seller and Kodak.

(a) Seller and Kodak hereby agree, jointly and severally, that they shall indemnify, defend and hold harmless Purchaser, its Affiliates and, if applicable, their respective directors, officers, shareholders, partners,

attorneys, accountants, agents and employees and their heirs, successors and assigns (the "Purchaser Indemnified Parties" and, collectively with the Seller Indemnified Parties, the "Indemnified Parties") from, against and in respect of any Losses imposed on, sustained, incurred or suffered by or asserted against any of the Purchaser Indemnified Parties, directly or indirectly relating to or arising out of:

(i) subject to Section 7.3(c) and 7.3(d), any breach of any representation or warranty made by Seller, Sterling or Kodak contained in this Agreement (other than Section 3.9 and Section 3.12) for the period such representation or warranty survives;

(ii) any breach by Seller, Sterling or Kodak of the representation and warranty contained in Section 3.9 for the period such representation and warranty survives;

(iii) any and all Excluded Liabilities;

(iv) any breach of any covenant or agreement of Seller, Sterling or Kodak contained in this Agreement;

(v) the failure of Seller or any of its Affiliates to comply with the provisions of the "bulk transfer" or similar laws of any jurisdiction in connection with the transactions contemplated by this Agreement (other than Losses arising as a result of Purchaser's failure to discharge any Assumed Liabilities);

(vi) any breach of the representation and warranty made in Section 3.12 for the period such representation and warranty survives and any and all Environmental Claims and Remedial Actions (including, without limitation, any costs of compliance with ISRA) with respect to the Owned Real Property and Leased Real Property to the extent resulting or arising from the conduct of the Business prior to the Closing Date; provided, however, that Seller and Kodak shall not be liable to the Purchaser Indemnified Parties except to the extent the Losses arising from such breaches, Environmental Claims and Remedial Actions exceed $5 million in the aggregate and then only for 50% of all such Losses in excess thereof;

(vii) subject to Section 7.3(c), the employment or termination of employment of Employees by Seller, Sterling or their respective Affiliates prior to the Closing Date except (A) to the extent accrued on the Adjusted Closing Balance Sheet, and (B) for liabilities assumed under Sections 5.5(i) and 5.6;

(viii) subject to Section 7.3(c), product liability Proceedings arising out of occurrences on or prior to the Closing Date (whether any such Proceeding arises before, on or after the Closing Date);

(ix) subject to Section 5.4(g), (i) all liabilities for Taxes imposed with respect to the taxable periods, or portions thereof, ending on or before the Closing Date,

including, without limitation, any Taxes resulting from any Transferred Subsidiary (or its subsidiaries) having been, or ceasing to be, included in any consolidated, combined or unitary Tax Return that included a Transferred Subsidiary (or its subsidiaries) for taxable periods, or portions thereof, ending on or before the Closing Date and (ii) all liabilities for Taxes of any member of a consolidated, combined or unitary group of which a Transferred Subsidiary (or its subsidiaries) is or was a member on or prior to the Closing Date, by reason of the application of Treasury Department Regulation Section 1.1502-6 or a similar provision of any state, local or foreign income tax law or regulation, except, with respect to clause (i) or (ii), to the extent such Taxes are reflected as Current Liabilities on the Adjusted Closing Balance Sheet; and

(x) the L&F Transfer.

(b) Seller's and Kodak's obligations under Section 7.3(a)(vi), (vii) and (viii) shall survive with respect to any claim initially asserted prior to the time the applicable statute of limitations has run but in no event to any claim initially asserted beyond eight (8) years after the Closing Date. Seller's and Kodak's obligation under Sections 7.3(a)(iii), (iv), (v), (ix) and (x) shall be unlimited as to time.

(c) Seller and Kodak shall not be liable to the Purchaser Indemnified Parties for any Losses with respect to

the matters contained in Sections 7.3(a)(i), (vii) and (viii) except to the extent (and then only to the extent) the Losses from such matters exceed an aggregate amount equal to $20 million (the "Deductible") and then only for all such Losses in excess thereof up to an aggregate amount equal to $500 million (the "Cap"); provided, however, that the Cap shall not be applicable to any Losses with respect to any breach of any representation or warranty by Seller, Sterling or Kodak made in Sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.13, 3.16, 3.17 or 3.22 or with respect to the matters contained in Section 7.3(a)(ii), (iii), (iv), (v), (vi), (ix) and (x). Notwithstanding the foregoing, if Purchaser makes a claim against an Indemnifying Party pursuant to Section 7.3(a) with respect to any matter for which there exists in the short period reserve on the Adjusted Closing Balance Sheet a specified item determined in accordance with Section 2.6(e), such specified item or any remaining portion thereof shall be applied to satisfy such claim before Purchaser shall have any right to indemnification, subject to this Section 7.3(c), from an Indemnifying Party with respect to such claims.

(d) Solely for purposes of this Section 7.3, a breach of the representations and warranties made in Sections 3.8, 3.11, 3.12 and 3.16(d) and 3.16(f) shall be deemed to have occurred only and to the extent that any such breach individually or in the aggregate for all such

breaches under the specific representation, disregarding the phrase "materially impair" or the qualification relating to Material Adverse Effect, results in Losses of $1 million or more.

Section 7.4 Indemnification Procedures. With respect to third party claims other than those relating to Taxes and the PineSol Litigation, all claims for indemnification by any Indemnified Party hereunder shall be asserted and resolved as set forth in this Section 7.4. In the event that any written claim or demand for which an indemnifying party, Seller, Kodak or Purchaser as the case may be (an "Indemnifying Party") would be liable to any Indemnified Party hereunder is asserted against or sought to be collected from any Indemnified Party by a third party, such Indemnified Party shall promptly, but in no event more than 15 days following such Indemnified Party's receipt of such claim or demand, notify the Indemnifying Party of such claim or demand and the amount or the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim and demand) (the "Claim Notice"). The Indemnifying Party shall have 30 days from the personal delivery or mailing of the Claim Notice, except in the case of a claim or demand that includes the filing of legal process in which case the Indemnifying Party shall have no more than 1/2 the applicable statutory period for answering such process (in

either such case, the "Notice Period") to notify the Indemnified Party (a) whether or not the Indemnifying Party disputes the liability of the Indemnifying Party to the Indemnified Party hereunder with respect to such claim or demand, and (b) for any claim or demand that asserts a liability of $1 million or more (or which from its face appears reasonably likely to assert a liability of $1 million or more), whether or not it desires to defend the Indemnified Party against such claim or demand; provided, however, that the Indemnifying Party shall not have the right to defend against any such claim or demand if the Indemnifying Party disputes its liability with respect thereto. All costs and expenses incurred by the Indemnifying Party in defending such claim or demand shall be a liability of, and shall be paid by, the Indemnifying Party. If the liability of the Indemnifying Party with respect to such claim or demand is subject to a deductible pursuant to Section 7.3(a)(vi) or 7.3(c) hereof that has not yet been fully satisfied, the Indemnified Party shall either, at its election, (i) reimburse the Indemnifying Party for any amount actually incurred by the Indemnifying Party up to the amount of the remaining applicable deductible or (ii) increase the applicable deductible by an amount equal to the lesser of the amount actually incurred by the Indemnifying Party and the remaining amount of such applicable deductible. Except as hereinafter provided, in

the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against such claim or demand, the Indemnifying Party shall have the right to defend the Indemnified Party by appropriate proceedings and shall have the sole power to direct and control such defense. If any Indemnified Party desires to participate in any such defense it may do so at its sole cost and expense. The Indemnified Party shall not settle a claim or demand without the prior written consent of the Indemnifying Party. The Indemnifying Party shall not, without (i) the prior written consent of the Indemnified Party, settle, compromise or offer to settle or compromise any such claim or demand on a basis which would result in the imposition of a consent order, injunction or decree which would restrict the future activity or conduct of the Indemnified Party or any subsidiary or affiliate thereof and (ii) obtaining an unconditional release of all Indemnified Parties with respect to such claim or demand. If the Indemnifying Party elects not to defend the Indemnified Party against such claim or demand, whether by not giving the Indemnified Party timely notice as provided above or otherwise, then the amount of any such claim or demand, or, if the same be contested by the Indemnified Party, then that portion thereof as to which such defense is unsuccessful (and the reasonable costs and expenses pertaining to such defense)

shall be the liability of the Indemnifying Party hereunder, subject to the limitations set forth in Section 7.3(c) hereof. The Indemnified Party will give the Indemnifying Party and its counsel access to, during normal business hours, the relevant business records and other documents, and shall permit them to consult with the employees and counsel of the Indemnified Party. The Indemnified Party shall use its best efforts in the defense of all such claims.

Section 7.5 Characterization of Indemnification Payments. All amounts paid by Seller, Kodak or Purchaser, as the case may be, under Article II (other than Section 2.7(b)), Article V or this Article VII shall be treated as adjustments to the Purchase Price for all Tax purposes. Such adjustments shall be allocated in a manner consistent with the allocation provided in Section 5.4(e) hereof.

Section 7.6 Computation of Losses Subject to Indemnification. The amount of any Loss for which indemnification is provided under Article II (other than Section 2.7(b)) or this Article VII shall be computed net of the actual decrease in income taxes paid as a result of realizing or reflecting such Loss for Tax purposes (calculated in accordance with the procedures and methodology set forth in Section 5.4(j) hereof) and net of any insurance proceeds received by the Indemnified Party in connection with such Loss.

ARTICLE VIII

TERMINATION

Section 8.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by agreement of Purchaser and Seller;

(b) by either Purchaser or Seller, by giving written notice of such termination to the other party, if the Closing shall not have occurred on or prior to March 31, 1995; provided that the terminating party is not in material breach of its obligations under this Agreement;

(c) by either Purchaser or Seller if there shall be in effect any law or regulation that prohibits the consummation of the Closing or if consummation of the Closing would violate any non-appealable final order, decree or judgment of any court or governmental body having competent jurisdiction;

(d) by either Purchaser or Seller if, as a result of action or inaction by the other party, the Closing shall not have occurred on or prior to the date that is 10 Business Days following the date on which all of the conditions to Closing set forth in Section 6.1 or 6.2 are satisfied or waived; and

(e) by either Purchaser or Seller if shareholder approval of this Agreement and the transactions contemplated hereby shall not be given at the extraordinary general

meeting of Purchaser's shareholders held pursuant to Section 5.3(c).

Section 8.2 Effect of Termination. In the event of the termination of this Agreement in accordance with Section 8.1 hereof, this Agreement shall thereafter become void and have no effect, and no party hereto shall have any liability to the other party hereto or their respective Affiliates, directors, officers or employees, except for the obligations of the parties hereto contained in Sections 9.1, 9.7, 9.8 and 9.9, and except that nothing herein will relieve any party from liability for any breach of this Agreement prior to such termination.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices. All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended, if delivered by registered or certified mail, return receipt requested, or by a national courier service, or if sent by telecopier, provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

To Purchaser:

RECKITT & COLMAN PLC
One Burlington Lane
London W4 2RW
Telephone: 011-44-81-994-6464
Telecopy: 011-44-81-994-8920
Attn: P. David Saltmarsh

With copies to:

RECKITT & COLMAN INC.
1655 Valley Road
Wayne, New Jersey 07474
Telephone: 201-633-3600
Telecopy: 201-633-3633
Attn: Lawrence J. Friedman

SATTERLEE STEPHENS BURKE & BURKE
230 Park Avenue
New York, NY 10169
Telephone: (212) 818-9200
Telecopy: (212) 818-9606/7
Attn: Gilman S. Burke

WEIL, GOTSHAL & MANGES
767 Fifth Avenue
New York, NY 10153
Telephone: (212) 310-8000
Telecopy: (212) 310-8007
Attn: Ellen J. Odoner

To Kodak:

EASTMAN KODAK COMPANY
343 State Street
Rochester, New York 14650
Telephone: (716) 724-4000
Telecopy: (716) 724-9448
Attn: General Counsel

With a copy to:

SULLIVAN & CROMWELL
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Telecopy: (212) 558-3588
Attn: Robert S. Risoleo

To Seller:

L&F PRODUCTS INC.
c/o Eastman Kodak Company
343 State Street
Rochester, New York 14650
Telephone: (716) 724-1932
Telecopy: (716) 724-9448
Attn: Kenneth K. Doolittle

With a copy to:

SULLIVAN & CROMWELL
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Telecopy: (212) 883-3588
Attn: Robert S. Risoleo

Section 9.2 Amendment; Waiver. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by Purchaser, Seller and Kodak, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 9.3 Assignment. No party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties hereto; provided, however, that Purchaser may

assign any or all of its rights and obligations under this Agreement to any of its wholly-owned Subsidiaries without the consent of the other parties hereto but such assignment shall not relieve Purchaser of any of its obligations hereunder.

Section 9.4 Entire Agreement. This Agreement (including all Schedules and Annexes hereto) contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, except for the Confidentiality Agreement which will remain in full force and effect until the Closing Date, when it shall terminate.

Section 9.5 Fulfillment of Obligations. Any obligation of any party to any other party under this Agreement or any of the Ancillary Agreements, which obligation is performed, satisfied or fulfilled by an Affiliate of such party, shall be deemed to have been performed, satisfied or fulfilled by the such party.

Section 9.6 Parties in Interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than Purchaser, Seller, Kodak or their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

Section 9.7 Public Disclosure. Notwithstanding anything herein to the contrary, each of the parties to this Agreement hereby agrees with the other parties hereto that, except as may be required to comply with the requirements of any applicable Laws or the rules and regulations of each stock exchange upon which the securities of one of the parties is listed and, in each such case, after notice to the other party, no press release or similar public announcement or communication shall ever, whether prior to or subsequent to the Closing, be made or caused to be made concerning the execution or performance of this Agreement unless specifically approved in advance by all parties hereto (such consent not to be unreasonably withheld).

Section 9.8 Return of Information. If for any reason whatsoever the transactions contemplated by this Agreement are not consummated, Purchaser shall promptly destroy or return to Seller all Books and Records furnished by Kodak, Seller, the Business or any of their respective agents, employees, or representatives (including all copies, if any, thereof), and shall not use or disclose the information contained in such Books and Records for any purpose or make such information available to any other entity or person.

Section 9.9 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated by this Agreement are consummated,

all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such expenses.

Section 9.10 Schedules. The disclosure of any matter in any schedule to this Agreement shall be deemed to be a disclosure for all purposes of this Agreement to which such matter could reasonably be expected to be pertinent, but shall expressly not be deemed to constitute an admission by Seller or Purchaser or to otherwise imply, that any such matter is material for the purposes of this Agreement.

SECTION 9.11 GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. EACH PARTY HERETO AGREES THAT IT SHALL BRING ANY ACTION OR PROCEEDING IN RESPECT OF ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTAINED IN OR CONTEMPLATED BY THIS AGREEMENT, WHETHER IN TORT OR CONTRACT OR AT LAW OR IN EQUITY, EXCLUSIVELY IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE COUNTY OF NEW YORK (THE "CHOSEN COURTS") AND (I) IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE CHOSEN COURTS, (II) WAIVES ANY OBJECTION TO LAYING VENUE IN ANY SUCH ACTION OR PROCEEDING IN THE CHOSEN COURTS, (III) WAIVES ANY OBJECTION THAT THE CHOSEN COURTS ARE AN INCONVENIENT FORUM OR DO NOT HAVE JURISDICTION

OVER ANY PARTY HERETO AND (IV) AGREES THAT SERVICE OF PROCESS UPON SUCH PARTY IN ANY SUCH ACTION OR PROCEEDING SHALL BE EFFECTIVE IF NOTICE IS GIVEN IN ACCORDANCE WITH SECTION 9.1 OF THIS AGREEMENT. PURCHASER IRREVOCABLY DESIGNATES SATTERLEE STEPHENS BURKE & BURKE, 230 PARK AVENUE, NEW YORK, NEW YORK 10169 AS ITS AGENT AND ATTORNEY IN FACT FOR THE ACCEPTANCE OF SERVICE OF PROCESS AND MAKING AN APPEARANCE ON ITS BEHALF IN ANY SUCH ACTION OR PROCEEDING AND TAKING ALL SUCH ACTS AS MAY BE NECESSARY OR APPROPRIATE IN ORDER TO CONFER JURISDICTION OVER IT UPON THE CHOSEN COURTS, AND PURCHASER STIPULATES THAT SUCH CONSENT AND APPOINTMENT IS IRREVOCABLE AND COUPLED WITH AN INTEREST.

Section 9.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement.

Section 9.13 Headings. The heading references herein and the table of contents hereto are for convenience purposes only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

Section 9.14 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application

thereof to any person or entity or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision to other persons, entities or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first written above.

EASTMAN KODAK COMPANY

By: \s\ WILBUR J. PREZZANO
Name: Wilbur J. Prezzano
Title: Executive Vice President

L&F PRODUCTS INC.

By: \s\ DOUGLAS A. MABON
Name: Douglas A. Mabon
Title: Vice President

STERLING WINTHROP INC.

By:\s\ WILBUR J. PREZZANO
Name: Wilbur J. Prezzano
Title: Chairman

RECKITT & COLMAN PLC

By:\s\ MICHAEL F. TURRELL
Name: Michael F. Turrell
Title: Group Director - The Americas

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this 26th day of September, 1994, before me, a notary public in and for the State of New York, personally appeared Douglas A. Mahon, who, being by me duly sworn, did depose and say that he is Vice-President of L&F PRODUCTS INC., one of the corporations described in and which executed the foregoing agreement; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[signature]
NOTARY PUBLIC

My Commission Expires:

[illegible] LOCKHART
Notary Public, State of New York
No. [illegible]
[illegible]
Certificate Filed in New York County
Commission Expires October 25, 1995

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this 26th day of September, 1994, before me, a notary public in and for the State of New York, personally appeared Michael F. Turrell, who, being by me duly sworn, did depose and say that he is Group Director-The Americas of RECKITT & COLMAN PLC, one of the corporations described in and which executed the foregoing agreement; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[signature]
NOTARY PUBLIC

My Commission Expires:

[illegible] LOCKHART
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Certificate Filed in New York County
Commission Expires October 25, 1995

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this 26th day of September, 1994, before me, a notary public in and for the State of New York, personally appeared Wilbur J. Prezzano, who, being by me duly sworn, did depose and say that he is Executive Vice President of EASTMAN KODAK COMPANY, one of the corporations described in and which executed the foregoing agreement; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

NOTARY PUBLIC

My Commission Expires:

[illegible] New York
[illegible]
[illegible] County
[illegible]
Commission Expires October 25, 1995

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this 26th day of September, 1994, before me, a notary public in and for the State of New York, personally appeared Wilbur J. Prezzano, who, being by me duly sworn, did depose and say that he is Chairman of STERLING WINTHROP INC., one of the corporations described in and which executed the foregoing agreement; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

NOTARY PUBLIC

My Commission Expires:

[illegible]
[illegible] New York
[illegible]
[illegible] County
[illegible] New York County
Commission Expires October 25, 1995